



**ANITA M. BOCK**  
Director

## **County of Los Angeles DEPARTMENT OF CHILDREN AND FAMILY SERVICES**

425 Shatto Place, Los Angeles, California 90020  
(213) 351-5602

July 9, 2002

The Honorable Board of Supervisors  
County of Los Angeles  
383 Kenneth Hahn Hall of Administration  
500 West Temple Street  
Los Angeles, CA 90012

Dear Supervisors:

### **REQUEST TO APPROVE AGREEMENT WITH THE COMMUNITY COLLEGE FOUNDATION FOR THE EARLY START TO EMANCIPATION PROGRAM (ESTEP) (ALL SUPERVISORIAL DISTRICTS) (3 VOTES)**

#### **IT IS RECOMMENDED THAT YOUR BOARD:**

1. Approve and instruct the Chairman to sign the attached one (1) year Agreement between the County of Los Angeles on behalf of the Department of Children and Family Services (DCFS) and the Community College Foundation, for the administration and provision of early emancipation services for selected foster/probation youth, ages 14-15, effective July 1, 2002, or upon Board approval, whichever is later, through June 30, 2003, with a total proposed contract cost of \$2,387,565. Funding for this Agreement is included in the Department's FY 2002-03 Proposed Budget using \$1,387,565 (58%) Federal and \$1,000,000 (42%) State funds. There is no net County cost.
2. Delegate authority to the Director of DCFS, or her designee, to execute amendments to the attached Agreement with Community College Foundation to increase the maximum contract amount by no more than 10% to accommodate any unanticipated increase in service levels effective the date of execution through June 30, 2003, provided that: (a) sufficient funding is allocated in the DCFS Budget; (b) approval of County Counsel and the Chief Administrative Office (CAO) is obtained prior to such amendment; and (c) the Director confirms in writing to the Board of Supervisors and the CAO within 15 workdays after execution that such amendments have been executed.

Board of Supervisors

**GLORIA MOLINA**

First District

**YVONNE BRATHWAITE BURKE**

Second District

**ZEV YAROSLAVSKY**

Third District

**DON KNABE**

Fourth District

**MICHAEL D. ANTONOVICH**

Fifth District

### **PURPOSE/JUSTIFICATION OF RECOMMENDED ACTIONS**

The recommended actions will enable DCFS to continue to provide assessment and educational services to selected foster/probation youth, ages 14-15, under the "Early Start to Emancipation Program" (ESTEP). These services will enable identified foster/probation youth to gain the requisite knowledge and skills to emancipate successfully from the foster care system. The current Agreement with Community College Foundation expired on June 30, 2002.

DCFS needs to continue to contract with the Community College Foundation to identify foster/probation youth with no network of support and to help them build essential living skills. These youth will be provided supplemental assistance including tutoring, involvement in skill building workshops, and attendance at various events designated to illuminate their future options. The focus of ESTEP is to make foster/probation youth aware of and prepare them for the opportunities and choices they will have during the next few years leading to emancipation. Most importantly, ESTEP will enable youth to access needed services that will further their goal of living independently after emancipation.

### **Implementation of Strategic Plan Goals**

The recommended actions are consistent with the principles of the County Strategic Plan by increasing access to emancipation and post emancipation services (Goal #1-Service Excellence, Strategy #1-Develop Standards for User Friendly Service) and increasing public/private partnerships (Goal #4-Fiscal Responsibility, Strategy #3-Increase Public/Private Partnerships).

### **FISCAL IMPACT/FINANCING**

The maximum sum of this Agreement is \$2,387,565. Funding is included in the Department's FY 2002-03 Proposed Budget using \$1,387,565 (58%) Federal and \$1,000,000 (42%) State funds. There is no net County cost.

### **FACTS AND PROVISIONAL/LEGAL REQUIREMENTS**

Since 1987, the County of Los Angeles has contracted with Community College Foundation for the provision of Emancipation/Independent Living Program services. Community College Foundation provides comprehensive and coordinated services for youth at their homes and community colleges throughout Los Angeles County's eight Service Planning Areas.

The term of this Agreement will become effective July 1, 2002, or upon Board approval, whichever is later, through June 30, 2003. The County may terminate the Agreement at any time by providing 30-day advance written notice to Community College Foundation.

The Agreement between the County of Los Angeles and Community College Foundation expressly provides that the County has no obligation to pay for expenditures by Community College Foundation which exceed the maximum contract sum. Further, Community College Foundation will not be asked to perform services which exceed the contract amount, scope of work, or contract dates.

Community College Foundation is in compliance with all Board, Chief Administrative Officer and County Counsel requirements.

This Board letter has been reviewed and approved by County Counsel and the Chief Administrative Office. The Agreement has been approved as to form by County Counsel.

### **CONTRACTING PROCESS**

DCFS conducted a pre-bid survey in April 2002, to determine if other sources for providing early emancipation assistance services were available in the public and private sector. Advertisements for the pre-bid survey were placed in four local newspapers for a total of three non-consecutive days, starting March 25, 2002 and ending April 3, 2002. DCFS also advertised on the Los Angeles County website during the same period.

The Honorable Board of Supervisors

July 9, 2002

Page 4

As a result, three sources were revealed, two of which were non responsive based on the requirements of the pre-bid survey. One source responded to the pre-bid survey with an incorrect format and was received by DCFS after the submission deadline date. The other source indicated it is unable to provide services throughout Los Angeles County. Therefore, DCFS proceeded with a Sole Source Justification to negotiate a contract with Community College Foundation pursuant to California State Regulations, section 23-650.15.151, Procurement by Negotiation.

DCFS has evaluated and determined that the Living Wage Program (County Code Chapter 2.201) does not apply to the recommended Agreement.

### **IMPACT ON CURRENT SERVICES (OR PROJECTS)**

Children placed in out of home care often are not afforded the opportunity to develop many essential skills which children with a family support network have. This program will allow Community College Foundation to continue identifying/assessing selected foster/probation youth and providing individual tutoring, workshops/seminars and practicums to further assist youth in building essential living skills which will help them towards emancipation.

Although the Probation Department is not a party to this Agreement, the Probation Department is aware of the benefits that participating probation youth receive through the ESTEP program and is in concurrence with the recommended actions.

### **CONCLUSION**

Upon execution by the Board of Supervisors, it is requested that the Executive Officer-Clerk of the Board send an executed copy of the adopted Board Letter and any attachments to:

1. Department of Children and Family Services  
Contracts Administration  
Attention: Theresa Wisda, Contracts Manager  
425 Shatto Place, Room 205  
Los Angeles, CA 90020

2. Office of the County Counsel

The Honorable Board of Supervisors

July 9, 2002

Page 5

Attention: Kathleen Felice, Senior Deputy County Counsel  
201 Centre Plaza Drive  
Ground Floor  
Monterey Park, CA 91754

3. Community College Foundation  
Attention: Delia Johnson, Vice President  
14156 Magnolia Blvd., Suite 101  
Sherman Oaks, CA 91423

Respectfully submitted,

ANITA M. BOCK  
Director

AMB:eo

Attachments (1)

c: Chief Administrative Officer  
Executive Officer, Board of Supervisors  
County Counsel

**COUNTY OF LOS ANGELES**  
**AGREEMENT**  
**FOR**  
**EARLY START TO EMANCIPATION PROGRAM (ESTEP)**  
**WITH**  
**THE COMMUNITY COLLEGE FOUNDATION**

**JULY 2002**

**AGREEMENT FOR EARLY START TO EMANCIPATION PROGRAM (ESTEP)  
WITH THE COMMUNITY COLLEGE FOUNDATION**

**TABLE OF CONTENTS**

<b><u>Section Number and Title</u></b>	<b><u>Page Number</u></b>
<b>1.0 APPLICABLE DOCUMENTS.....</b>	<b>2</b>
<b>2.0 CONTRACTOR’S WORK .....</b>	<b>3</b>
<b>3.0 TERM AND TERMINATION.....</b>	<b>3</b>
<b>4.0 CONTRACT SUM .....</b>	<b>3</b>
<b>5.0 PAYMENT AND INVOICES .....</b>	<b>4</b>
<b>6.0 RECORDS AND AUDITS .....</b>	<b>7</b>
<b>7.0 AUDIT SETTLEMENT.....</b>	<b>8</b>
<b>8.0 INDEMNIFICATION .....</b>	<b>9</b>
<b>9.0 GENERAL INSURANCE REQUIREMENTS.....</b>	<b>9</b>
<b>10.0 INSURANCE COVERAGE REQUIREMENTS:.....</b>	<b>11</b>
<b>11.0 NOTICES .....</b>	<b>12</b>
<b>12.0 CHANGES AND AMENDMENTS .....</b>	<b>13</b>
<b>13.0 ASSIGNMENT/DELEGATION OF RIGHTS.....</b>	<b>14</b>
<b>14.0 SUBCONTRACTING .....</b>	<b>15</b>
<b>15.0 INDEPENDENT CONTRACTOR STATUS.....</b>	<b>17</b>
<b>16.0 COVENANT AGAINST CONTINGENT FEES .....</b>	<b>17</b>
<b>17.0 DISCLOSURE OF INFORMATION.....</b>	<b>17</b>
<b>18.0 COMPLIANCE WITH APPLICABLE LAWS.....</b>	<b>18</b>
<b>19.0 COMPLIANCE WITH CIVIL RIGHTS LAWS .....</b>	<b>19</b>

20.0	NON-DISCRIMINATION IN EMPLOYMENT .....	19
21.0	CLIENT GRIEVANCES .....	20
22.0	EVENTS OF DEFAULT .....	20
23.0	TERMINATION FOR CONTRACTOR'S DEFAULT .....	21
24.0	TERMINATION FOR IMPROPER CONSIDERATION .....	21
25.0	TERMINATION FOR CONVENIENCE .....	22
26.0	CONTRACTOR RESPONSIBILITY AND DEBARMENT .....	23
27.0	LIMITATION OF COUNTY'S OBLIGATION DUE TO NON-APPROPRIATION OF FUNDS .....	24
28.0	CONFLICT OF INTEREST .....	25
29.0	EMPLOYEE BENEFITS AND TAXES .....	25
30.0	NOTICE TO EMPLOYEES REGARDING THE FEDERAL EARNED INCOME CREDIT .....	26
31.0	CONFIDENTIALITY .....	26
32.0	CONTRACT ENFORCEMENT, QUALITY ASSURANCE PLAN, MONITORING, AND REVIEW .....	26
33.0	EMPLOYMENT ELIGIBILITY VERIFICATION .....	27
34.0	CRIMINAL CLEARANCES .....	28
35.0	CHILD SUPPORT COMPLIANCE PROGRAM .....	30
36.0	FORMER FOSTER YOUTH CONSIDERATION .....	31
37.0	CONSIDERATION OF HIRING COUNTY EMPLOYEES TARGETED FOR LAYOFFS .....	32
38.0	CONSIDERATION OF GREATER AVENUES FOR INDEPENDENCE (GAIN) OR GENERAL RELIEF OPPORTUNITIES FOR WORK (GROW) PARTICIPANTS FOR EMPLOYMENT .....	32
39.0	TERMINATION FOR NON-ADHERENCE TO COUNTY LOBBYIST ORDINANCE .....	34



<b>40.0</b>	<b>NOTICE OF DELAYS .....</b>	<b>34</b>
<b>41.0</b>	<b>USE OF RECYCLED-CONTENT PAPER.....</b>	<b>34</b>
<b>42.0</b>	<b>PROPRIETARY RIGHTS .....</b>	<b>34</b>
<b>43.0</b>	<b>FIXED ASSETS.....</b>	<b>35</b>
<b>44.0</b>	<b>CHILD ABUSE PREVENTION REPORTING.....</b>	<b>36</b>
<b>45.0</b>	<b>COMMUNITY BUSINESS ENTERPRISES PROGRAM .....</b>	<b>36</b>
<b>46.0</b>	<b>AUTHORIZATION WARRANTY .....</b>	<b>36</b>
<b>47.0</b>	<b>DISPUTE RESOLUTION PROCEDURE.....</b>	<b>36</b>
<b>48.0</b>	<b>COMPLIANCE WITH JURY SERVICE PROGRAM .....</b>	<b>38</b>
<b>49.0</b>	<b>INTERPRETATION OF CONTRACT .....</b>	<b>39</b>

### **EXHIBITS/ATTACHMENTS**

Exhibit A	-Statement of Work
	Attachment 1 Educational Assessment Form
	Attachment 2 Sample Monthly Report
	Attachment 3 Referral Forms 3A and 3B
	Attachment 4 Emancipation Preparation Contract (DCFS Form 5205)
	Attachment 5 Case Activity Log (DCFS Form 1950)
	Attachment 6 Early Start to Emancipation Program Practicum Curriculum
	Attachment 7 Community College Locations
Exhibit A-1	-Performance Requirement Summary
Exhibit B	-Budget
Exhibit C	-Contractor's Equal Employment Opportunity (EEO) Certification
Exhibit D	-Community Business Enterprise Form (CBE)
Exhibit E	-Employment Acknowledgment and Confidentiality Agreement
Exhibit F	-Auditor-Controller Contract Accounting and Administration Handbook
Exhibit G	-Internal Revenue Services Notice 1015

Exhibit H	-Community College Districts
Exhibit I	-Sample Community College Subcontract
Exhibit J	-Certification of Independent Price Determination
Exhibit K	-County of Los Angeles Contractor Employee Jury Service Program
Exhibit K1	-Contractor Employee Jury Service Program Application for Exception and Certification Form
Exhibit L	-Office of Management and Budget Circular A-110 -Office of Management and Budget Circular A-122 -Office of Management and Budget Circular A-133
Exhibit M	-Child Support Compliance Program
Exhibit N	-Quality Assurance Plan

**AGREEMENT  
FOR**

**THE EARLY START TO EMANCIPATION PROGRAM (ESTEP)** (hereinafter referred to as "Agreement").

This Agreement, made and entered into this \_\_\_\_ day of \_\_\_\_\_ 2002, by and between

COUNTY OF LOS ANGELES  
hereinafter referred to as  
"COUNTY"

and

THE COMMUNITY COLLEGE  
FOUNDATION

\_\_\_\_\_  
hereinafter referred to as  
"CONTRACTOR"

**W I T N E S S E T H**

WHEREAS, pursuant to Government Code Sections 26227, 31000 and 53703, COUNTY is permitted to contract for services; and

WHEREAS, the COUNTY desires to provide assessment and intervention services to selected foster/probation youth ages 14-15, placed in out of home care to increase awareness of resources available to youth leading into emancipation; and

WHEREAS, COUNTY has determined that the services to be provided under this Agreement are necessary to assist foster/probation youth ages 14-15, placed in out of home care to build essential daily living skills; and

WHEREAS, pursuant to provisions of public law 99-272, through the addition of section 477 to Title IV-E of the Social Security Act, the California Department of Social Services (CDSS) is designated to administer the County's Independent Living Program (ILP) for adolescents, ages 14 and older, in out of home care; and

WHEREAS, CONTRACTOR warrants that it possesses the competence, expertise and personnel necessary to provide such services; and

WHEREAS, the following terms, as used in this Agreement, shall have the following meanings:

- A. "Contract" means a legally binding Agreement between two parties;
- B. "Day(s)" means calendar day(s) unless otherwise specified;
- C. "DCFS" means County's Department of Children and Family Services;
- D. "Director" means County's Director of Children and Family Services or her authorized designee;
- E. "Fiscal Year" means County's Fiscal Year which commences July 1 and ends the following June 30;
- F. "Project" means the work to be performed by Contractor as defined in Exhibit A, Statement of Work;
- G. "Program Manager" means County representative responsible for daily management of contract operation and overseeing monitoring activities;
- H. "Subcontract" means a contract by which a third party agrees to provide services or materials necessary to fulfill an original contract.

NOW THEREFORE, in consideration of the mutual promises, covenants and conditions set forth herein, the parties hereto and each of them do agree as follows:

## **1.0 APPLICABLE DOCUMENTS**

- 1.1 This Agreement, and the Exhibits hereto, constitute the complete and exclusive statement of understanding between the parties, which supersedes all previous agreements, written or oral, and all other communications between the parties relating to the subject matter of this Agreement.
- 1.2 Exhibits A, A-1, B, C, D, E, F, G, H, I, J, K, K1, L, M and N set forth below are attached to and incorporated by reference in this Agreement.
- 1.3 In the event of any conflict in the definition or interpretation of any word, responsibility, service, schedule, or contents of a deliverable product between this Agreement and Exhibits, or among Exhibits, said conflict or inconsistency shall be resolved by giving precedence first to the Agreement, and then to the Exhibits according to the following priority:

### **Exhibit A -Statement of Work**

- Attachment 1 Educational Assessment Form
- Attachment 2 Sample Monthly Report
- Attachment 3 ESTEP Referral Forms  
(DCFS: 3A/Probation: 3B)
- Attachment 4 Emancipation Preparation Contract  
(DCFS Form 5205)
- Attachment 5 Case Activity Log (DCFS Form 1950)
- Attachment 6 ESTEP Practicum Curriculum
- Attachment 7 Community College Locations

### **Exhibit A-1 Performance Requirement Summary**

Exhibit B	-Budget
Exhibit C	-Contractor's Equal Employment Opportunity (EEO) Certification
Exhibit D	-Community Business Enterprise Form (CBE)
Exhibit E	-Employment Acknowledgment and Confidentiality Agreement
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Exhibit M	-Child Support Compliance Program
Exhibit N	-Quality Assurance Plan

## **2.0 CONTRACTOR'S WORK**

- 2.1 Pursuant to the provisions of this Agreement, CONTRACTOR shall provide COUNTY with assessment, referral and tutorial services as defined herein and as more fully set forth in Exhibit A, Statement of Work.
- 2.2 If the CONTRACTOR provides any tasks, deliverables, goods, services, or other work, other than as specified in this Contract, the same shall be deemed to be a gratuitous effort on the part of the CONTRACTOR, and the CONTRACTOR shall have no claim whatsoever against the COUNTY.

## **3.0 TERM AND TERMINATION**

- 3.1 The term of this Agreement shall commence on July 1, 2002 or date of execution by County Board of Supervisors, whichever is later, and shall continue through June 30, 2003, unless terminated earlier as provided herein.

## **4.0 CONTRACT SUM**

- 4.1 COUNTY and CONTRACTOR agree that this is a firm-fixed price contract. During the term of this Agreement, COUNTY shall reimburse CONTRACTOR for the costs of performing the services set forth in Exhibit A, Statement of Work, in accordance with Section 5.0, Payment and

Invoices, provided that the total amount payable under this Agreement is \$2,387,565 Maximum Contract Sum.

- 4.2 CONTRACTOR has prepared and submitted to COUNTY a Budget segregating direct and indirect costs and profit for the work to be performed by CONTRACTOR under this Agreement. Budgeted expenses shall be reduced by applicable CONTRACTOR revenues which are identified thereon. The line items shall provide sufficient detail to determine the quality and quantity of services to be delivered. This Budget is attached hereto and incorporated by reference herein as Exhibit B, Budget. CONTRACTOR represents and warrants that the Budget is true and correct in all respects and services shall be delivered hereunder in accordance with the Budget. In the event the Maximum Contract Sum is increased pursuant to Section 12.0 hereof, CONTRACTOR shall prepare and submit an amended Budget.
- 4.3 The Maximum Contract Sum shall not exceed \$2,387,565 for the contract period from July 1, 2002 through June 30, 2003.
- 4.4 COUNTY has no obligation to pay for expenditures by CONTRACTOR that exceed the Maximum Contract Sum.

## **5.0 PAYMENT AND INVOICES**

- 5.1 For work performed in accordance with the terms of this Agreement as determined by COUNTY, CONTRACTOR shall invoice COUNTY monthly in arrears at the actual cost incurred in conformance with Exhibit B, Budget, and in the format prescribed by the COUNTY (i.e. personnel, employee benefits, supplies and expenses, equipment, travel and indirect costs).
- 5.2 CONTRACTOR, without prior approval of COUNTY, may reallocate up to a maximum of five percent (5%) of the annual contract sum for each year between the approved line item budget categories (i.e. personnel, employee benefits, supplies and expenses, equipment, travel and indirect costs). Any subsequent budget modifications above the five percent (5%) maximum shall be agreed to by the parties and requested in writing by CONTRACTOR. In any event, such revisions shall not result in any increase in the Maximum Contract Sum. Such requests to COUNTY shall be addressed as follows:

County of Los Angeles  
Department of Children and Family Services  
Attention: William Gay, Program Manager  
1373 East Center Court Drive, Suite 200  
Covina, CA 91724

And a duplicate copy of the Budget Modification Request to:

County of Los Angeles  
Department of Children and Family Services  
Contracts Administration  
Attention: Theresa Wisda, Contract Manager  
425 Shatto Place, Room 205  
Los Angeles, CA 90020

- 5.3 Expenditures made by CONTRACTOR in the operation of this Agreement shall be in compliance and conformity with Office of Management and Budget (OMB) Circular A-110, A-122, and A-133, attached hereto as Exhibit L, and the line item budget categories of Exhibit B, Budget.
- 5.4 CONTRACTOR shall submit an invoice in arrears for services rendered in the previous month. All invoices should be received within thirty (30) days of the last day of the previous month but may be received later than thirty (30) days at COUNTY's sole discretion as long as sufficient funds remain under this Agreement. All such services rendered by CONTRACTOR shall be paid in accordance with Exhibit B, Budget.
- 5.5 CONTRACTOR shall submit the original monthly invoice to the Finance Office and one copy to the County Program Manager for review and approval.

CONTRACTOR shall send original invoices to be approved to:

County of Los Angeles  
Department of Children and Family Services  
Attention: Contract and Grant Payments Unit  
425 Shatto Place, Room 402  
Los Angeles, CA 90020

And a duplicate copy of the invoices to:

County of Los Angeles  
Department of Children and Family Services  
Attention: William Gay, Program Manager  
1373 East Center Court Drive, Suite 200  
Covina, CA 91724

- 5.6 Upon receipt of CONTRACTOR's monthly invoice, Finance shall forward the invoice to County Program Manager, or designee for review and approval. The County Program Manager shall review the detailed charges

to ensure charges are in accordance with the Agreement terms and that invoiced services have been received.

- 5.7 Upon approval of the monthly invoice, the County Program Manager, or designee, shall return the invoice to the Finance Office for payment.
- 5.8 Payment to CONTRACTOR will be made in arrears on a monthly basis for services performed, provided that the CONTRACTOR is not in default under any provision of this Agreement. COUNTY shall attempt to authorize payment within thirty (30) days following receipt of invoice, provided that all work performed during the preceding month has been reviewed, accepted, signed, and dated by the Program Manager or designee. COUNTY has no obligation to pay for any work except those services expressly authorized by this Agreement.
- 5.9 In compliance with Internal Revenue Service (IRS) requirements, CONTRACTOR shall provide CONTRACTOR's Tax Identification Number.
- 5.10 CONTRACTOR is responsible for the accuracy of invoices submitted to COUNTY. Further, it is the responsibility of CONTRACTOR to reconcile or otherwise correct inaccuracies or inconsistencies in the invoices submitted by CONTRACTOR. Overpayment received by CONTRACTOR, as determined by DCFS' Program Manager, or designee, shall be returned to COUNTY by CONTRACTOR within thirty (30) days of receiving notification of such overpayment, or shall be set off against future payments due CONTRACTOR. Notwithstanding any other provision of this Agreement, CONTRACTOR shall return to COUNTY any and all payments which exceed the Maximum Contract Sum. Furthermore, CONTRACTOR shall return said payments within thirty (30) days of receiving notification of overpayment from the COUNTY or immediately upon discovering such overpayment, whichever date is earlier.
- 5.11 CONTRACTOR shall not be paid for expenditures beyond the Maximum Contract Sum, and CONTRACTOR agrees that COUNTY has no obligation, whatsoever, to pay for any expenditures by CONTRACTOR that exceed the Maximum Contract Sum.
- 5.12 CONTRACTOR shall notify COUNTY, in the manner set forth in Sections 5.0 and 11.0 of this Agreement, when expenditures under this Agreement total seventy-five (75%) of the Maximum Contract Sum. Furthermore, CONTRACTOR shall notify COUNTY, in the manner set forth in Sections 5.0 and 11.0 of this Agreement, when this Agreement is within six (6) months of expiration. CONTRACTOR shall send these notices to those persons and addresses which are set forth in Sections 5.0 and 11.0.



## **6.0 RECORDS AND AUDITS**

- 6.1 CONTRACTOR shall maintain accurate and complete financial records of all its activities and operations relating to this Agreement in accordance with generally accepted accounting principles and which meet the requirements for contract accounting described in the Auditor-Controller Contract Accounting and Administration Handbook, Exhibit F. CONTRACTOR shall also maintain accurate and complete employment and other records relating to its performance of this Agreement.
- 6.2 CONTRACTOR agrees that COUNTY, or its authorized representatives, the State of California, or its authorized representatives, or the Federal Government, or its authorized representatives, including, but not limited to, the U.S. Comptroller General, shall have access to and the right to examine, audit, excerpt, copy or transcribe any pertinent transaction, activity, or records relating to this Agreement. All such material, including, but not limited to, all financial records, timecards and other employment records and confidential information, shall be kept and maintained by CONTRACTOR at a location in Los Angeles County and shall be made available to COUNTY, State or Federal authorities, during the term of this Agreement and for a period of five (5) years thereafter unless COUNTY's written permission is given to dispose of any such material prior to such time. If such material is located outside of Los Angeles County, then, at COUNTY's sole option, CONTRACTOR shall pay COUNTY for travel per diem and other costs incurred by COUNTY in exercising its rights under this Section. CONTRACTOR shall maintain all records in accordance with California State records and retention regulations including the provisions of California Department of Social Services Manual, Section 23-353.
- 6.3 In the event that an audit is conducted of CONTRACTOR specifically regarding this Agreement by any Federal or State Auditor, or by any auditor employed by CONTRACTOR or otherwise, then CONTRACTOR shall file a copy of such audit report with County's Auditor-Controller within thirty (30) days of CONTRACTOR's receipt thereof, unless otherwise provided by applicable Federal or State law or under this Agreement. COUNTY shall make a reasonable effort to maintain the confidentiality of such audit report(s).
- 6.4 CONTRACTOR shall be responsible for annual financial audits of its agency and its subcontractor(s) if required by COUNTY and/or the California Department of Social Services (CDSS), to be conducted by an independent audit firm and in accordance with generally accepted auditing standards. Within thirty (30) calendar days after issuance of the audit reports, CONTRACTOR shall forward copies of such reports to DCFS.

- 6.5 CONTRACTOR shall, during normal business hours, allow appropriate County, State and Federal agencies, including CDSS, County's Auditor-Controller or its designee to evaluate, audit, review, inspect and monitor its accounting books and records of program operations, including the interview of CONTRACTOR's staff, insurance agents, banks, personnel, vendors and subcontractor(s). Methods may include the inspection of accounting ledgers, journals, canceled checks, timecards, personnel records, fringe benefit rate notices, receipts and invoices, payroll tax records, subcontracts, space and equipment lease agreements, and other relevant accounting books, records, worksheets and logs as appropriate for ensuring CONTRACTOR's accountability of expenditures and program performance under this Agreement. CONTRACTOR shall ensure the cooperation of all subcontractor(s), its staff, and Board members in all such efforts.
- 6.6 All uses of funds paid to CONTRACTOR and other financial transactions related to CONTRACTOR's provision of services under this Agreement are subject to review and/or audit by DCFS, County's Auditor-Controller or its designee, or the State of California. In the event this Agreement is subject to Audit exceptions, CONTRACTOR shall pay to COUNTY the full amount of CONTRACTOR's liability for such audit exceptions, as determined by DCFS, upon demand by COUNTY.
- 6.7 Failure on the part of CONTRACTOR to comply with the provisions of this Section shall constitute a material breach of this Agreement upon which COUNTY may withhold reimbursement or terminate this Agreement.

## **7.0 AUDIT SETTLEMENT**

If, at any time during the term of this Agreement or within five (5) years after the expiration or termination of this Agreement, authorized representatives of COUNTY conduct an audit of CONTRACTOR regarding the services provided to COUNTY hereunder and if such audit finds that COUNTY's dollar liability for such services is less than payments made by COUNTY to CONTRACTOR, then CONTRACTOR agrees that the difference, at the COUNTY's discretion, shall be either: (1) repaid forthwith by CONTRACTOR to COUNTY by cash payment; or (2) at COUNTY's option, credited against future payments hereunder to CONTRACTOR. If such audit finds that COUNTY's dollar liability for services provided hereunder is more than payments made by COUNTY to CONTRACTOR, then the difference shall be paid to CONTRACTOR by COUNTY provided that in no event shall COUNTY's maximum obligation for this Agreement exceed the Maximum Contract Sum.

## **8.0 INDEMNIFICATION**

CONTRACTOR shall indemnify, defend and hold harmless COUNTY, its Special Districts, elected and appointed officers, employees, and agents from and against any and all liability, including but not limited to demands, claims, actions, fees, costs, and expenses (including attorney and expert witness fees), arising from or connected with CONTRACTOR's acts and/or omissions arising from and/or relating to this Agreement.

## **9.0 GENERAL INSURANCE REQUIREMENTS**

Without limiting CONTRACTOR's indemnification of COUNTY and during the term of this Agreement, CONTRACTOR shall provide and maintain, and shall require all of its subcontractors to maintain, the programs of insurance specified in this Agreement. Such insurance shall be primary to and not contributing with any other insurance or self-insurance programs maintained by COUNTY, and such coverage shall be provided and maintained at CONTRACTOR's own expense.

9.1 Evidence of Insurance: Certificate(s) or other evidence of coverage satisfactory to COUNTY shall be delivered to DCFS Contract Administrator, 425 Shatto Place, Room 205, Los Angeles, CA 90020 prior to commencing services under this Agreement. Such certificates or other evidence shall:

9.1.1 Specifically identify this Agreement.

9.1.2 Clearly evidence all coverages required in this Agreement.

9.1.3 Contain the express condition that COUNTY is to be given written notice by mail at least thirty (30) days in advance of cancellation for all policies evidenced on the certificate of insurance.

9.1.4 Include copies of the additional insured endorsement to the commercial general liability policy, adding the COUNTY of Los Angeles, its Special Districts, its officials, officers and employees as insureds for all activities arising from this Agreement.

9.1.5 Identify any deductibles or self-insured retentions for COUNTY's approval. The COUNTY retains the right to require CONTRACTOR to reduce or eliminate such deductibles or self-insured retentions as they apply to COUNTY, or, require CONTRACTOR to provide a bond guaranteeing payment of all such retained losses and related costs, including, but not limited to, expenses or fees, or both, related to investigations, claims administrations, and legal defense.

Such bond shall be executed by a corporate surety licensed to transact business in the State of California.

- 9.2 Insurer Financial Ratings: Insurance is to be provided by an insurance company acceptable to the COUNTY with an A.M. Best rating of not less than A:VII, unless otherwise approved by COUNTY.
- 9.3 Failure to Maintain Coverage: Failure by CONTRACTOR to maintain the required insurance, or to provide evidence of insurance coverage acceptable to COUNTY, shall constitute a material breach of the Contract upon which COUNTY may immediately terminate or suspend this Agreement. COUNTY, at its sole option, may obtain damages from CONTRACTOR resulting from said breach. Alternatively, COUNTY may purchase such required insurance coverage, and without further notice to CONTRACTOR, COUNTY may deduct from sums due to CONTRACTOR any premium costs advanced by COUNTY for such insurance.
- 9.4 Notification of Incidents, Claims or Suits: CONTRACTOR shall report to COUNTY:
  - 9.4.1 Any accident or incident relating to services performed under this Agreement which involves injury or property damage which may result in the filing of a claim or lawsuit against CONTRACTOR and/or COUNTY. Such report shall be made in writing within 24 hours of occurrence.
  - 9.4.2 Any third party claim or lawsuit filed against CONTRACTOR arising from or related to services performed by CONTRACTOR under this Agreement.
  - 9.4.3 Any injury to a CONTRACTOR employee which occurs on COUNTY property. This report shall be submitted on a COUNTY "Non-Employee Injury Report" to the COUNTY Contract Manager.
  - 9.4.4 Any loss, disappearance, destruction, misuse, or theft of any kind whatsoever of COUNTY property, monies or securities entrusted to CONTRACTOR under the terms of this Agreement.
- 9.5 Compensation for COUNTY Costs: In the event that CONTRACTOR fails to comply with any of the indemnification or insurance requirements of this Agreement, and such failure to comply results in any costs to COUNTY, CONTRACTOR shall pay full compensation for all costs incurred by COUNTY.

9.6 Insurance Coverage Requirements for Subcontractors: CONTRACTOR shall ensure any and all subcontractors performing services under this Agreement meet the insurance requirements of this Agreement by either:

9.6.1 CONTRACTOR providing evidence of insurance covering the activities of subcontractors, or

9.6.2 CONTRACTOR providing evidence submitted by subcontractors evidencing that subcontractors maintain the required insurance coverage. COUNTY retains the right to obtain copies of evidence of subcontractor insurance coverage at any time.

## **10.0 INSURANCE COVERAGE REQUIREMENTS:**

10.1 General Liability insurance (written on ISO policy form CG 00 01 or its equivalent) with limits of not less than the following:

General Aggregate:	\$2 million
Products/Completed Operations Aggregate:	\$1 million
Personal and Advertising Injury:	\$1 million
Each Occurrence:	\$1 million

10.2 Automobile Liability insurance (written on ISO policy form CA 00 01 or its equivalent) with a limit of liability of not less than one million dollars (\$1,000,000) for each accident. Such insurance shall include coverage for all "owned," "hired" and "non-owned" vehicles, or coverage for "any auto."

10.3 Workers' Compensation and Employer's Liability insurance providing workers' compensation benefits, as required by the Labor Code of the State of California or by any other state, and for which CONTRACTOR is responsible. If CONTRACTOR's employees will be engaged in maritime employment, coverage shall provide workers' compensation benefits as required by the U.S. Longshore and Harbor Workers' Compensation Act, Jones Act or any other federal law for which CONTRACTOR is responsible.

In all cases, the above insurance also shall include Employers' Liability coverage with limits of not less than the following:

Each Accident:	\$1 million
Disease – policy limit:	\$1 million
Disease – each employee:	\$1 million

10.4 Professional Liability: Insurance covering liability arising from any error, omission, negligent or wrongful act of the CONTRACTOR, its officers or employees with limits of not less than one million dollars (\$1,000,000) per occurrence and three million dollars (\$3,000,000) aggregate. The

coverage also shall provide an extended two-year reporting period commencing upon termination or cancellation of this Agreement.

- 10.5 Property Coverage: Such insurance shall be endorsed naming the COUNTY of Los Angeles as loss payee, provide deductibles of no greater than 5% of the property value, and shall include:

Personal Property: Automobiles and Mobile Equipment – Special form (“all risk”) coverage for the actual cash value of COUNTY-owned or leased property.

Real Property and All Other Personal Property – Special form (“all-risk”) coverage for the full replacement value of COUNTY-owned or leased property.

- 10.6 Crime Coverage: Insurance with limits in amounts not less than indicated below covering against loss of money, securities, or other property referred to in this Agreement, and naming the COUNTY as loss payee.

Employee Dishonesty:	\$ 1 million
Forgery or Alteration:	\$ 1 million
Theft, Disappearance and Destruction:	\$ 1 million
Computer Fraud:	\$ 1 million
Burglary and Robbery:	\$ 1 million

## **11.0 NOTICES**

- 11.1 All notices shall be given in writing by enclosing the same in a sealed envelope addressed to the intended party and by depositing such envelope with postage prepaid in the United States Post Office or any substation or public letterbox. All notices to COUNTY shall be sent in duplicate addressed to the following:

Anita M. Bock, Director  
Department of Children and Family Services  
Contracts Administration  
Attention: Contracts Manager  
425 Shatto Place  
Los Angeles, California 90020

All notices to CONTRACTOR shall be sent to CONTRACTOR

Community College Foundation  
Attention: Delia Johnson  
14156 Magnolia Blvd, Suite 101  
Sherman Oaks, CA 91423  
Telephone: (818) 501-1940  
FAX: (818) 501-1944

OR

Such other place as may hereinafter be designated in writing by the CONTRACTOR.

- 11.2 All Notices may also be given upon personal delivery to any person whose actual knowledge would be sufficient notice to CONTRACTOR. Further, it is expressly understood that actual knowledge of an individual CONTRACTOR or of a co-partner, or if the CONTRACTOR is a corporation, of an officer or member of the corporation, or by the managing agent regularly in charge of the work on behalf of CONTRACTOR, shall in any case be sufficient notice.
- 11.3 CONTRACTOR shall notify COUNTY as provided in section 11.1 when expenditures under this Agreement total seventy-five percent (75%) of the Maximum Contract Sum. CONTRACTOR shall also notify COUNTY as provided in Section 11.1 when the Agreement is within six (6) months of expiration.

## **12.0 CHANGES AND AMENDMENTS**

The COUNTY reserves the right to change any portion of the work required under this Agreement, or make amendment to such other terms and conditions as may become necessary and reasonable. Any such revisions shall be accomplished in the following manner:

- 12.1 For any change which does not affect the period of performance, Maximum Contract Sum, Maximum Annual Contract Sum or payments, and which does not materially alter any term or condition included in this Agreement, an amendment shall be prepared, and signed by CONTRACTOR and the Director. Approval of County Counsel must be obtained for any change which affects the scope of work.
- 12.2 For any change which affects the period of performance, Maximum Contract Sum, Maximum Annual Contract Sum or payments, or which materially alters any other term or condition in this Agreement, a written amendment shall be prepared, signed by the CONTRACTOR, and

thereafter submitted to COUNTY's Board of Supervisors for consideration and, if approved, execution.

- 12.3 For purposes of Sections 12.1 and 12.2, a change materially alters a term or condition included in this Agreement if it: (1) is significant as to price, quantity, quality or delivery when contrasted with the total costs or scope of the services being procured; (2) alters minimum requirements for prospective bidders, proposers or negotiating entities for this Agreement; or (3) would result in a change in the Maximum Contract Sum set forth in Section 4.0 of this Agreement.
- 12.4 Notwithstanding the provisions of Sections 12.1 and 12.2, COUNTY's DCFS Director may, without further action by COUNTY's Board of Supervisors, prepare and sign amendments to this Agreement which increase payments to CONTRACTOR which are commensurate with increases in the units of service being provided under this Agreement under the following conditions.
  - 12.4.1 COUNTY's total payments to CONTRACTOR shall not increase more than ten percent (10%) per year and in the aggregate above the original Maximum Contract Sum during the term of this Agreement.
  - 12.4.2 COUNTY's Board of Supervisors has appropriated sufficient funds for all changes described in each such amendment to this Agreement.
  - 12.4.3 Approval of County Counsel and the Chief Administrative Officer is obtained prior to any such amendment to this Agreement; and
  - 12.4.4 The Director shall notify COUNTY's Board of Supervisors, Chief Administrative Officer, and County Counsel of all Agreement changes, in writing, within fifteen (15) days following execution of such amendment.

### **13.0 ASSIGNMENT/DELEGATION OF RIGHTS**

- 13.1 CONTRACTOR shall not assign its rights or delegate its duties hereunder, either in whole or in part, without the prior written consent of the Los Angeles County Board of Supervisors or the Director in the event the Director has the delegated authority to consent. Any attempted assignment and/or delegation without said consent shall constitute a default under Section 22.0, Events of Default herein and shall be null and void, subject to waiver by COUNTY. If Contractor is a corporation, partnership, limited liability company or other entity, then an assignment requiring COUNTY's consent hereunder shall also include any sale,



exchange, assignment, divestment or change in members, directors or officers giving majority control of CONTRACTOR to any person(s) or legal entity other than the majority in control of CONTRACTOR at the time of execution of this Agreement. Any payments by COUNTY to CONTRACTOR or its assignee, or acceptance of any payments by COUNTY from CONTRACTOR or its assignee on any claim under this Agreement shall not waive or constitute such COUNTY consent.

- 13.2 Upon assignment and/or delegation, each and all of the provisions, agreements, terms, covenants and conditions herein contained, to be performed by CONTRACTOR, shall be binding upon both CONTRACTOR and upon any assignee/delegate thereof.
- 13.3 COUNTY's consent may be reasonably withheld if, among other things, the proposed assignee fails to meet the requirements for contracting satisfied by the original CONTRACTOR and/or the then current COUNTY or State contracting requirements for this or similar agreements. COUNTY may require, as a condition to its consent to assignment, that the assignee enter into an agreement utilizing then current standard COUNTY documentation for this or similar agreements.
- 13.4 Any payments by COUNTY to any delegatee or assignee on any claim under this Agreement shall reduce dollar for dollar any claims which CONTRACTOR may have against COUNTY and shall be subject to set-off, recoupment, or other reduction for any claims which COUNTY may have against CONTRACTOR, whether under this Agreement or otherwise.

#### **14.0 SUBCONTRACTING**

- 14.1 CONTRACTOR may subcontract with the Community Colleges listed in Exhibit H, Community College Districts, herein, to provide services required in this Contract. Such subcontracting is approved by COUNTY subject to the provision of this section 14.0. Any other attempt by CONTRACTOR to subcontract performance of any of the terms of this Agreement not expressed herein, in whole or in part, without consent of the Director or her designee, shall be null and void and shall constitute a breach of the terms of this Agreement. In the event of such breach, this Agreement may be terminated forthwith. CONTRACTOR shall submit each subcontract to the COUNTY for written approval prior to subcontractor performing any work hereunder.
- 14.2 All of the provisions of this Agreement and any Amendment(s) hereto shall extend to and be binding upon subcontractors, provided that assignment or delegation of rights by a subcontractor under a subcontract shall not require COUNTY approval. The CONTRACTOR shall include in all subcontracts the following provision: "This Agreement is a subcontract

under the terms of a prime contract with the County of Los Angeles. All representations and warranties contained in this subcontract shall inure to the benefit of the COUNTY of Los Angeles.”

- 14.3 CONTRACTOR shall indemnify and hold COUNTY harmless from any and all liability arising or resulting from the use of any subcontractor and its employees in the same manner and to the same extent that CONTRACTOR indemnifies COUNTY from any and all liability arising from or resulting from the actions or omissions of its own employees.
- 14.4 CONTRACTOR shall obtain the following from each subcontractor before any subcontractor employee may perform any work under any subcontract to this Agreement. CONTRACTOR shall maintain and make available upon request of Program Manager all the following documents:
  - 14.4.1 An executed Employee Acknowledgment and Confidentiality Agreement (see Exhibit E), executed by each subcontractor and each of subcontractor’s employees approved to perform work hereunder.
  - 14.4.2 Certificates of Insurance which establish that the subcontractor maintains all the programs of insurance required by Section 9.0 of this Agreement (Insurance), and
  - 14.4.3 The Tax Identification Number of the subcontracting agency to be placed on the signature page of the subcontract. This Tax Identification Number shall not be identical to the CONTRACTOR’s Tax Identification Number.
- 14.5 CONTRACTOR shall provide County’s Program Manager with copies of all executed subcontracts after County Program Manager’s approval.
- 14.6 No subcontract shall alter in any way any legal responsibility of CONTRACTOR to COUNTY. CONTRACTOR shall remain responsible for any and all performance required of it under this Agreement, including, but not limited to, the obligation to properly supervise, coordinate, and perform all work required hereunder.
- 14.7 Notwithstanding any other provision of this Agreement, the parties do not in any way intend that any person or entity shall acquire any rights as a third party beneficiary of this Agreement.
- 14.8 CONTRACTOR shall be solely liable and accountable for any and all payments and other compensation to all subcontractor’s engaged hereunder and their officers, employees, and agents. COUNTY shall have no liability or responsibility whatsoever for any payment or other

compensation for any subcontractor or their officers, employees, and agents.

## **15.0 INDEPENDENT CONTRACTOR STATUS**

This Agreement is by and between the COUNTY and CONTRACTOR and is not intended, and shall not be construed, to create the relationship of agent, servant, employee, partnership, joint venture or association, as between COUNTY and CONTRACTOR. CONTRACTOR understands and agrees that all persons furnishing services to COUNTY pursuant to this Agreement are, for purposes of Workers' Compensation liability, employees solely of CONTRACTOR and not of COUNTY. CONTRACTOR shall bear the sole responsibility and liability for furnishing Workers' Compensation benefits to any person for injuries arising from or connected with service to COUNTY provided pursuant to this Agreement.

## **16.0 COVENANT AGAINST CONTINGENT FEES**

16.1 CONTRACTOR warrants that no person or selling agency has been employed or retained to solicit or secure this Agreement for either a flat fee, a percentage commission or any other form or remuneration.

16.2 For breach or violation of this covenant, COUNTY shall have the right to terminate this Agreement and/or, at its sole discretion, require the CONTRACTOR to repay any funds converted to such use prior to any payment for past work or performance of any future work.

## **17.0 DISCLOSURE OF INFORMATION**

17.1 The CONTRACTOR shall not disclose any details in connection with this Agreement to any party, except as may be otherwise provided herein or required by law. However, in recognizing the CONTRACTOR's need to identify its services and related clients to sustain itself, the COUNTY shall not inhibit the CONTRACTOR from publicizing its role under this Agreement within the following conditions:

17.1.1 CONTRACTOR shall develop all publicity material in a professional manner.

17.1.2 During the course of performance of this Agreement, the CONTRACTOR, its employees, agents, and subcontractors shall not publish or disseminate commercial advertisements, press releases, opinions or feature articles, using the name of the COUNTY without the prior written consent of the COUNTY. Said consent shall not be unreasonably withheld, and approval by the COUNTY may be assumed in the event no adverse comments are received in writing two (2) weeks after submittal.

17.1.3 CONTRACTOR may, without prior written permission of COUNTY, indicate in its proposals and sales material that it has been awarded a contract to provide services, provided, however, that the requirements of this provision shall apply.

## **18.0 COMPLIANCE WITH APPLICABLE LAWS**

18.1 CONTRACTOR shall conform to and abide by all applicable Municipal, County, State and Federal laws and regulations, court rules, and ordinances, insofar as the same or any of them are applicable. This includes compliance with mandatory standards and policies relating to energy efficiency in the State Energy Conservation Plan (Title 24, California Administrative Code) and compliance with Section 306 of the Clean Air Act (42 USC 1857(h)), Section 508 of the Clean Water Act (33 USC 1368), Executive Order 11738 and Environmental Protection Agency regulations (40 CFR Part 15). Insofar as permits and/or licenses are required for the prescribed services and/or any construction authorized herein, the same must be obtained from the regulatory agency having jurisdiction thereover.

18.1.1 CONTRACTOR acknowledges that this Agreement will be funded, in part, with federal funds; therefore, CONTRACTOR agrees that it shall comply with all applicable federal laws and regulations pertaining to such federal funding. Said federal laws and regulations include, but are not limited to, 45 CFR Section 92.36, et seq.

18.1.2 CONTRACTORS shall comply with all applicable laws pertaining to confidentiality. This shall include but is not limited to the confidentiality provisions of Section 827 and Section 10850 of the California Welfare and Institutions Code and California MPP Division 19.

18.1.3 CONTRACTOR agrees to comply fully with the terms of Executive Order 11246, entitled Equal Employment Opportunity as amended by Executive Order 11375, and as supplemented by Department of Labor Regulations (41 CFR Part 60).

18.2 Failure by CONTRACTOR to comply with such laws and regulations shall be a material breach of this Agreement and may result in termination of this Agreement.

18.3 CONTRACTOR agrees to indemnify and hold COUNTY harmless from any loss, damage or liability resulting from a violation on the part of the CONTRACTOR, its employees, agents or subcontractors of such laws,

regulations, rules, policies, standards or ordinances as described in Section 18.1.

## **19.0 COMPLIANCE WITH CIVIL RIGHTS LAWS**

CONTRACTOR hereby assures that it will comply with Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975, Title IX of the Education Amendments of 1973, where applicable, and Title 43, Part 17 of the Code of Federal Regulations Subparts A and B, to the end that no persons shall on the grounds of race, creed, color, national origin, political affiliation, marital status, sex, age, or handicap be subjected to discrimination under the privileges and use granted by this Agreement or under any project, program or activity supported by this Agreement.

## **20.0 NON-DISCRIMINATION IN EMPLOYMENT**

- 20.1 CONTRACTOR certifies and agrees that all persons under its employ, its affiliates, subsidiaries, or holding companies, are and will be treated equally by it without regard to or because of race, religion, color, national origin, political affiliation, marital status, sex, age, or handicap, in compliance with all applicable Federal and State non-discrimination laws and regulations. This includes compliance with Executive Order 11246 entitled "Equal Employment Opportunity," Executive Order 11375 and as supplemented in the Department of Labor Regulations (41 CFR Part 60).
- 20.2 CONTRACTOR shall take affirmative action to ensure that qualified applicants are employed and that employees are treated during employment without regard to race, religion, color, national origin, political affiliation, marital status, sex, age, or handicap. Such action shall include but is not limited to the following: employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation and selection for training, including apprenticeship.
- 20.3 CONTRACTOR shall deal with its subcontractors, bidders, or vendors without regard to or because of race, religion, color, national origin, political affiliation, marital status, sex, age, or handicap.
- 20.4 CONTRACTOR shall provide access for COUNTY's representatives to inspect CONTRACTOR's employment records during regular business hours in order to verify compliance with the provisions of this section when so requested by COUNTY.
- 20.5 If COUNTY finds that any of the above provisions have been violated, the same shall constitute a material breach of contract upon which COUNTY may determine to terminate this Agreement. COUNTY reserves the right

to determine independently whether the non-discrimination provisions of this Agreement have been violated. In addition, a determination by the California Fair Employment Opportunity Commission that CONTRACTOR has violated State or Federal non-discrimination laws or regulations shall constitute a finding by COUNTY that CONTRACTOR has violated the non-discrimination provisions of this Agreement.

- 20.6 The parties agree that in the event CONTRACTOR violates the non-discrimination provisions of this Agreement, COUNTY shall, at its option, be entitled to a sum of Five Hundred Dollars (\$500.00) pursuant to California Civil Code Section 1671 as liquidated damages in lieu of terminating this Agreement.

## **21.0 CLIENT GRIEVANCES**

CONTRACTOR shall establish a written procedure to resolve client grievances. At the request of County's Program Manager, CONTRACTOR shall submit such procedures to COUNTY within five (5) calendar days from date of the request.

## **22.0 EVENTS OF DEFAULT**

### **22.1 Default for Non-Performance**

COUNTY may terminate the whole or any part of this Agreement if either of the following circumstances exist:

22.1.1 CONTRACTOR has made a misrepresentation of any required element in the bid/proposal submitted in response to the Invitation for Bids/Request for Proposals, if any; or

22.1.2 CONTRACTOR fails to comply with or perform any provision of this Agreement or fails to make progress so as to endanger performance of any term of this Agreement.

### **22.2 Default for Insolvency**

COUNTY may terminate this Agreement for default for insolvency in the event of the occurrence of any of the following:

22.2.1 Insolvency of CONTRACTOR. CONTRACTOR shall be deemed insolvent if it has ceased to pay its debts in the ordinary course of business or cannot pay its debts as they become due, whether it has filed for bankruptcy or not, and whether insolvent within the meaning of the Federal Bankruptcy Law or not;

22.2.2 The filing of a voluntary petition in bankruptcy;

22.2.3 The appointment of a Receiver or Trustee for CONTRACTOR;

22.2.4 The execution by CONTRACTOR of an assignment for the benefit of creditors.

**22.3 Other Events of Default**

Determination by the COUNTY, the State Fair Employment Commission, or the Federal Equal Employment Opportunity Commission of discrimination having been practiced by CONTRACTOR in violation of State and/or Federal laws thereon.

**23.0 TERMINATION FOR CONTRACTOR'S DEFAULT**

23.1 Upon determining the existence of any one or more of the circumstances heretofore described in Section 22.0, Events of Default, this Agreement may be subject to termination either immediately or within such longer time period as noticed by COUNTY.

23.2 In the event COUNTY terminates this Agreement in whole or in part as provided in this Agreement, COUNTY may procure, upon such terms and in such manner as COUNTY may deem appropriate, services similar to those previously provided by CONTRACTOR. Any excess cost, as determined by the COUNTY, arising from procurement of services under this Section 23.2, over and above the Contract sum, shall be charged against the CONTRACTOR and/or its sureties.

23.3 The remedies reserved to COUNTY herein shall be cumulative and in addition to any other remedies provided in law or equity.

23.4 In the event that, following services of the Notice of Termination of this Agreement under the provisions of this Agreement, it is determined for any reason that CONTRACTOR was not in default under the provisions of this Agreement or that the default was excusable under provisions of this Agreement, a correction of the Notice of Termination shall be issued, and the rights and obligations of the parties shall be the same as if the Notice of Termination had not been issued.

**24.0 TERMINATION FOR IMPROPER CONSIDERATION**

24.1 COUNTY may, by written notice to CONTRACTOR, immediately terminate the right of CONTRACTOR to proceed under this Agreement if it is found that consideration, in any form, was offered or given by CONTRACTOR, either directly or through an intermediary, to any COUNTY officer, employee or agent with the intent of securing the Agreement or securing

favorable treatment with respect to the award, amendment or extension of the Agreement or the making of any determinations with respect to the CONTRACTOR's performance pursuant to the Agreement. In the event of such termination, COUNTY shall be entitled to pursue the same remedies against CONTRACTOR as it could pursue in the event of a default by the CONTRACTOR.

- 24.2 CONTRACTOR shall immediately report any attempt by a COUNTY officer or employee to solicit such improper consideration. The report shall be made either to the COUNTY manager charged with the supervision of the employee or to the COUNTY Auditor-Controller's Employee Fraud Hotline at (213) 974-0914 or (800) 544-6861.
- 24.3 Among other items, such improper consideration may take the form of cash, discounts, service, the provision of travel or entertainment, or tangible gifts.

## **25.0 TERMINATION FOR CONVENIENCE**

- 25.1 The performance of services under this Agreement may be terminated in whole or part when such action is deemed by COUNTY to be in its best interest. Termination of services hereunder shall be effected by delivery to CONTRACTOR of a thirty (30) day advance notice of termination specifying the extent to which performance of services under this Agreement is terminated and the date upon which such termination becomes effective.
- 25.2 After receipt of a notice of termination and except as otherwise directed by COUNTY, the CONTRACTOR shall:
  - 25.2.1 Stop services under this Agreement on the effective date of termination.
  - 25.2.2 To the extent possible, continue to, as required by this Agreement perform until the effective date of termination.
- 25.3 After receipt of a notice of termination, CONTRACTOR shall submit to COUNTY in the form and with the certification as may be prescribed by COUNTY, its termination claim and invoice. Such claim and invoice shall be submitted promptly. COUNTY will not accept any such invoice submitted later than three (3) months from the effective date of termination. Upon failure of CONTRACTOR to submit its termination claim and invoice within the time allowed, COUNTY may determine, on the basis of information available to COUNTY, the amount, if any, due to CONTRACTOR in respect to the termination, and such determination shall be final. After such determination is made, COUNTY shall pay



CONTRACTOR the amount so determined as full and complete satisfaction of all amounts due CONTRACTOR under this Agreement for any terminated services.

- 25.4 Subject to the provisions of Section 25.3 above, COUNTY and CONTRACTOR shall make a good faith attempt to agree upon an amount due to CONTRACTOR for any terminated services following the total or partial termination of services pursuant to this Agreement. If after a good faith effort, an amount due CONTRACTOR is not agreed upon, COUNTY shall determine the amount due CONTRACTOR by assessing the contract value for similar services provided herein to all documented services, which CONTRACTOR or its subcontractor(s) has satisfactorily provided. COUNTY shall pay the agreed upon or determined amount, provided that such amount shall not exceed the Maximum Contract Sum under this Agreement as reduced by the amount of payments otherwise made and as further reduced by the amount potentially due for services not terminated.

## **26.0 CONTRACTOR RESPONSIBILITY AND DEBARMENT**

- 26.1 A responsible Contractor is a Contractor who has demonstrated the attribute of trustworthiness, as well as quality, fitness, capacity and experience to satisfactorily perform the contract. It is the COUNTY's policy to conduct business only with responsible Contractors.
- 26.2 The CONTRACTOR is hereby notified that, in accordance with Chapter 2.202 of the County Code, if the COUNTY acquires information concerning the performance of the CONTRACTOR on this or other contracts which indicates that the CONTRACTOR is not responsible, the COUNTY may, in addition to other remedies provided in the Contract, debar the CONTRACTOR from bidding on COUNTY contracts for a specified period of time not to exceed three years, and terminate any or all existing contracts the CONTRACTOR may have with the COUNTY.
- 26.3 The COUNTY may debar the CONTRACTOR if the Board of Supervisors finds, in its discretion, that the CONTRACTOR has done any of the following: (1) violated any term of a contract with the COUNTY; (2) committed any act or omission which negatively reflects on the CONTRACTOR's quality, fitness or capacity to perform a contract with the COUNTY or any other public entity, or engaged in a pattern or practice which negatively reflects on same; (3) committed an act or offense which indicates a lack of business integrity or business honesty; or (4) made or submitted a false claim against the COUNTY or any other public entity.

- 26.4 If there is evidence that the CONTRACTOR may be subject to debarment, the Department will notify the CONTRACTOR in writing of the evidence which is the basis for the proposed debarment and will advise the CONTRACTOR of the scheduled date for a debarment hearing before the Contractor Hearing Board.
- 26.5 The Contractor Hearing Board will conduct a hearing where evidence on the proposed debarment is presented. The CONTRACTOR and/or the CONTRACTOR's representative shall be given an opportunity to submit evidence at that hearing. After the hearing, the Contractor Hearing Board shall prepare a proposed decision, which shall contain a recommendation regarding whether the CONTRACTOR should be debarred, and, if so, the appropriate length of time of the debarment. If the CONTRACTOR fails to avail itself of the opportunity to submit evidence to the Contractor Hearing Board, the CONTRACTOR may be deemed to have waived all rights of appeal.
- 26.6 A record of the hearing, the proposed decision and any other recommendation of the Contractor Hearing Board shall be presented to the Board of Supervisors. The Board of Supervisors shall have the right to modify, deny or adopt the proposed decision and recommendation of the Hearing Board.
- 26.7 These terms shall also apply to subcontractors of COUNTY Contractors.

**27.0 LIMITATION OF COUNTY'S OBLIGATION DUE TO NON-APPROPRIATION OF FUNDS**

- 27.1 COUNTY's obligation is payable only and solely from funds appropriated for the purpose of this Agreement.
- 27.2 All funds for payment are conditioned upon the County Board of Supervisors' appropriation of sufficient funds for this purpose. Payments during subsequent fiscal year periods are dependent upon similar Board of Supervisors' action.
- 27.3 In the event the County Board of Supervisors does not allocate sufficient funds for the next succeeding fiscal year to meet the CONTRACTOR's anticipated obligations to providers under contracts, then services may be: (1) terminated in their entirety; or (2) reduced in accordance with available funding as deemed necessary by the COUNTY. COUNTY shall notify CONTRACTOR in writing of any such non-allocation of funds at the earliest possible date.

- 27.4 In the event that the COUNTY's Board of Supervisors adopts, any fiscal year, a COUNTY Budget which provides for reductions in the salaries and benefits paid to the majority of COUNTY employees and imposes similar reductions with respect to COUNTY contracts, the COUNTY reserves the right to reduce its payment obligation correspondingly for that fiscal year and any subsequent fiscal year services provided by the CONTRACTOR under the contract. The COUNTY's notice to the CONTRACTOR regarding said reduction in payment obligation shall be provided within thirty (30) calendar days of the Board's approval of such actions. The CONTRACTOR shall continue to provide all of the services set forth in the Contract.

## **28.0 CONFLICT OF INTEREST**

- 28.1 No COUNTY employee whose position in COUNTY enables such employee to influence the award or administration of this Agreement or any competing Agreement, and no spouse or economic dependent of such employee, shall be employed in any capacity by CONTRACTOR herein, or have any other direct or indirect financial interest in this Agreement. No officer or employee of COUNTY who may financially benefit from the provision of services hereunder shall in any way participate in COUNTY's approval, or ongoing evaluation of such services, or in any way attempt to unlawfully influence COUNTY's approval or ongoing evaluation of such services.
- 28.2 CONTRACTOR shall comply with all conflict of interest laws, ordinances, and regulations now in effect or hereafter to be enacted during the term of this Agreement. CONTRACTOR warrants that it is not now aware of any facts which created a conflict of interest. If CONTRACTOR hereafter becomes aware of any facts which might reasonably be expected to create a conflict of interest, it shall immediately make full written disclosure of such facts to COUNTY. Full written disclosure shall include, without limitation, identification of all persons implicated, and complete description of all relevant circumstances.

## **29.0 EMPLOYEE BENEFITS AND TAXES**

- 29.1 CONTRACTOR shall be solely responsible for providing to, or on behalf of its employees, all legally required salaries, wages, benefits, or other compensation.
- 29.2 COUNTY shall have no liability or responsibility for any taxes, including, without limitation, sales, income, employee withholding and/or property taxes which may be imposed in connection with or resulting from this Agreement or CONTRACTOR's performance hereunder.

### **30.0 NOTICE TO EMPLOYEES REGARDING THE FEDERAL EARNED INCOME CREDIT**

CONTRACTOR shall notify its employees and shall require each subcontractor to notify its employees, that they may be eligible for the Federal Earned Income Credit under the federal income tax laws. Such notice shall be provided in accordance with the requirements set forth in Internal Revenue Services Notice 1015, Exhibit G.

### **31.0 CONFIDENTIALITY**

31.1 CONTRACTOR shall maintain the confidentiality of all records, including but not limited to COUNTY records and client records in accordance with all applicable federal, state and local laws, regulations, ordinances and directives regarding confidentiality. CONTRACTOR shall inform all of its officers, employees and agents providing services hereunder of the confidentiality provisions of this Agreement. All employees of CONTRACTOR who have access to confidential records and data must sign and adhere to the attached "Employee Acknowledgment and Confidentiality Agreement", Exhibit E. CONTRACTOR shall notify COUNTY of any attempt to obtain confidential records through the legal process.

31.2 CONTRACTORS shall comply with all applicable laws pertaining to confidentiality. This shall include but is not limited to the confidentiality provisions of Section 827 and Section 10850 of the California Welfare and Institutions Code and California MPP Division 19.

### **32.0 CONTRACT ENFORCEMENT, QUALITY ASSURANCE PLAN, MONITORING, AND REVIEW**

32.1 The Director shall be responsible for the enforcement of this Agreement on behalf of COUNTY and shall be assisted therein by those officers and employees of COUNTY having duties in connection with the administration thereof. Director hereby reserves the right to assign such personnel as are needed to serve as Program Manager in order to inspect and review CONTRACTOR's performance of and compliance with all contractual services, duties, obligations, responsibilities, administrative procedures and staffing as set forth in this Agreement.

32.2 CONTRACTOR hereby agrees to cooperate with the Director, Program Manager, and any duly authorized State or Federal government representative, in the review and monitoring of CONTRACTOR's program, records and procedures at any reasonable time.

- 32.3 The COUNTY or its agent will evaluate CONTRACTOR's performance under this Agreement on not less than an annual basis. Such evaluation will include assessing CONTRACTOR's compliance with all contract terms and performance standards. CONTRACTOR deficiencies which COUNTY determines are severe or continuing and that may place performance of the Agreement in jeopardy if not corrected will be reported to the Board of Supervisors. The report will include improvement/corrective action measures taken by the COUNTY and CONTRACTOR. If improvement does not occur consistent with the corrective action measures, COUNTY may terminate this Agreement or impose other penalties as specified in this Agreement.
- 32.4 At the request of COUNTY, CONTRACTOR, or its appropriate representative, shall attend meetings and/or training sessions, as determined by COUNTY.
- 32.5 The CONTRACTOR shall establish and maintain a Quality Assurance Plan to assure that all COUNTY requirements as stated in this Agreement, are met or exceeded. A copy of this plan shall be submitted to the COUNTY'S Program Manager within thirty (30) days of the execution of this Agreement and shall by reference herein be incorporated into this Agreement as Exhibit N. The requirements of the CONTRACTOR's Quality Assurance Plan is explained in more detail in Section IV of the Statement of Work, attached hereto as Exhibit A.
- 32.6 CONTRACTOR shall prepare and submit to County's Program Manager a written semi-annual report describing the services provided throughout each Fiscal Year. The CONTRACTOR's semi-annual report shall include, but not be limited to:
- 32.6.1 Description of services and/or deliverables rendered during the period, dollar amount of services rendered during the period, dollar balance remaining under the Agreement, and any difficulties encountered that could jeopardize the completion of the project or milestones or deliverables within the schedule.

### **33.0 EMPLOYMENT ELIGIBILITY VERIFICATION**

CONTRACTOR warrants that it fully complies with all Federal statutes and regulations regarding employment of aliens and others, and that all its employees performing services hereunder meet the citizenship or alien status requirements contained in Federal statutes and regulations. CONTRACTOR shall obtain, from all covered employees performing services hereunder, all verification and other documentation of employment eligibility status required by Federal statutes and regulations as they currently exist and as they may be hereafter amended. CONTRACTOR shall retain such documentation of all covered employees for the

period prescribed by law. CONTRACTOR shall indemnify, defend, and hold harmless, the COUNTY, its officers and employees from employer sanctions and any other liability which may be assessed against CONTRACTOR or COUNTY in connection with any alleged violation of Federal statutes or regulations pertaining to the eligibility for employment of persons performing services under this Agreement.

### **34.0 CRIMINAL CLEARANCES**

- 34.1 For the safety and welfare of the children to be served under this Agreement, CONTRACTOR agrees, as permitted by law, to ascertain arrest and conviction records for all current and prospective employees, independent CONTRACTORS, volunteers or subcontractors who may come in contact with children in the course of their work, volunteer activity or performance of the subcontract and shall maintain such records in the file of each such person.
- 34.2 CONTRACTOR shall immediately notify COUNTY of any arrest and/or subsequent conviction, other than for minor traffic offenses, of any employee, independent CONTRACTOR, volunteer staff or subcontractor who may come in contact with children while providing services under this Agreement when such information becomes known to CONTRACTOR.
- 34.3 CONTRACTOR agrees not to engage or continue to engage the services of any person convicted of any crime involving harm to children, or any crime involving conduct inimical to the health, morals, welfare or safety of others, including but not limited to the offenses specified in Health and Safety Code, Section 11590 (offenses requiring registration as a controlled substance offender) and those defined in the following Penal Code Sections or any other existing or future Penal Code sections which address such crimes:

SECTION	TITLE
220	Assault with intent to commit mayhem, rape, unlawful sodomy, unlawful oral copulation, rape in concert with another, lascivious acts upon a child, or forcible acts of sexual penetration.
243.4	Sexual battery.
245	Assault with a deadly weapon or force likely to produce great bodily injury.
261.5	Unlawful sexual intercourse with a minor.

264.1	Voluntary acting in concert with another person, by force or violence and against the will of the victim, committed rape, rape of spouse or forcible act of sexual penetration either personally or by aiding and abetting the other person.
272	Causing, encouraging or contributing to delinquency of person under age 18.
273a	Great bodily harm or death to child; endangerment of person or health.
273ab	Assault resulting in death of child under 8 years of age.
273d	Infliction of corporal punishment or injury on child resulting in traumatic condition.
273g	Degrading, immoral or vicious practices in the presence of children.
273.5	Infliction of corporal punishment or injury on spouse, former spouse, cohabitant, former cohabitant or the mother or father of his or her child resulting in traumatic condition.
286	Sodomy.
288	Lewd or lascivious acts upon the body of a child under age 14.
288a	Unlawful Oral copulation.
289	Forcible acts of sexual penetration against the victim's will.
290	Sex offenders required to register with the chief of police, sheriff or police of a campus of University of California, California State University or community college.
314	Indecent exposure.
368(b)	Great bodily harm or death to elder or dependent adult; Endangerment of person or health or elder

	or dependent adult.
647 (a) & (d)	Disorderly conduct relating to lewd/behavior/prostitution.
647.6	Annoyance of or molesting a child under age 18.
667.5(c)	Violent felony as defined in California Penal Code Section 667.5 (c).

### **35.0 CHILD SUPPORT COMPLIANCE PROGRAM**

#### **35.1 CONTRACTOR's Warranty of Adherence to County's Child Support Compliance Program:**

35.1.1 CONTRACTOR acknowledges that COUNTY has established a goal of ensuring that all individuals who benefit financially from COUNTY through contract are in compliance with their court-ordered child, family and spousal support obligations in order to mitigate the economic burden otherwise imposed upon COUNTY and its taxpayers.

35.1.2 As required by County's Child Support Compliance Program (County Code Chapter 2.200) and without limiting CONTRACTOR's duty under this Contract to comply with all applicable provisions of law, CONTRACTOR warrants that it is now in compliance and shall during the term of this Contract maintain compliance with employment and wage reporting requirements as required by the Federal Social Security Act (42 USC Section 653a) and California Unemployment Insurance Code Section 1088.5, and shall implement all lawfully served Wage and Earnings Withholding Orders or District Attorney Notice of Wage and Earnings Assignment for Child and Spousal Support, pursuant to Code of Civil Procedure Section 706.031 and Family Code Section 5246(b).

#### **35.2 Termination for Breach of Warranty to Maintain Compliance with County's Child Support Compliance Program:**

35.2.1 Failure of CONTRACTOR to maintain compliance with the requirements set forth in Section 35.1 "Contractor's Warranty of Adherence to County's Child Support Compliance Program" shall constitute a default by CONTRACTOR under this Contract. Without limiting the rights and remedies available to COUNTY under any other provision of this Contract, failure to cure such



default within ninety (90) days of notice by the Los Angeles County District Attorney shall be grounds upon which the County Board of Supervisors may terminate this Contract pursuant to Section 23.0, "Termination for Contractor's Default."

**35.3 CONTRACTOR's Acknowledgment of COUNTY's Commitment to Child Support Enforcement.**

35.3.1 CONTRACTOR acknowledges that COUNTY places a high priority on enforcement of child support laws and the apprehension of child support evaders. CONTRACTOR understands that it is COUNTY's policy to encourage all COUNTY contractors to voluntarily post COUNTY's "L.A.'s Most Wanted Delinquent Parents" poster in a prominent position at CONTRACTOR's place of business. County's District Attorney will supply CONTRACTOR with the poster to be used.

**36.0 FORMER FOSTER YOUTH CONSIDERATION**

36.1 Should CONTRACTOR require additional or replacement personnel after the effective date of this Agreement to perform services set forth herein, CONTRACTOR shall give consideration (after COUNTY employees, and GAIN/GROW participants as described in Sections 37.0 and 38.0, respectively) for any such position(s) to qualified former foster youth. CONTRACTOR shall notify COUNTY of any new or vacant positions(s) within CONTRACTOR's firm by sending via U.S. mail or facsimile, a list denoting any position(s) for which hiring is anticipated to:

Department of Children and Family Services  
425 Shatto Place, Room 307  
Los Angeles, California 90020  
FAX: (213) 383-3773

36.2 The notice sent by CONTRACTOR must indicate the position(s)/title(s) for vacant or new employment opportunity, description of same, requirements/qualifications for position(s), anticipated pay rate or salary schedule, the location where application(s) requests for application(s) may be sent, final date of acceptance for applications and any special circumstances relevant to the firing procedure for said position(s).

36.3 CONTRACTOR is exempt from the provisions of this Section if it is a government entity.

**37.0 CONSIDERATION OF HIRING COUNTY EMPLOYEES TARGETED FOR LAYOFFS**

- 37.1 Should CONTRACTOR require additional or replacement personnel after the effective date of this Agreement to perform the services set forth herein, CONTRACTOR shall give first consideration for such employment openings to qualified permanent COUNTY employees who are targeted for layoff or qualified former COUNTY employees who are on a reemployment list during the term of this Agreement.
- 37.2 CONTRACTOR shall notify COUNTY of any new or vacant position(s) within the CONTRACTOR's personnel who perform services set forth herein, by sending via U.S. mail or facsimile, a list denoting any positions(s) for which hiring is anticipated to:

Department of Human Resources  
500 West Temple Street, Room 588  
Los Angeles, California 90012  
FAX: (213) 680-2450

- 37.3 CONTRACTOR is exempt from the provisions of this Section if it is a governmental entity.

**38.0 CONSIDERATION OF GREATER AVENUES FOR INDEPENDENCE (GAIN) OR GENERAL RELIEF OPPORTUNITIES FOR WORK (GROW) PARTICIPANTS FOR EMPLOYMENT**

- 38.1 Should CONTRACTOR require additional or replacement personnel after the effective date of this Agreement, CONTRACTOR shall give consideration for any such employment openings to participants in the County's Department of Public Social Services' Greater Avenues for Independence (GAIN) Program or General Relief Opportunities for Work (GROW) Program who meet CONTRACTOR's minimum qualifications for the open position. COUNTY will refer GAIN/GROW participants, by job category, to CONTRACTOR.

In the event that both laid-off COUNTY employees and GAIN/GROW participants are available for hiring, COUNTY employees shall be given first priority.

- 38.2 CONTRACTOR shall send notices to the COUNTY's Department of Public Social Services offices(s) located nearest to the job location at the following addresses:

Region I – West County  
5200 W. Century Blvd.  
Los Angeles, CA 90045

Region II – West San Fernando  
Valley  
14355 Roscoe Blvd.  
Panorama City, CA 91402

Region II – West San  
Fernando Valley  
Santa Clarita Sub-Office  
27233 Camp Plenty Road  
Canyon Country, CA 91351

Region II – West San Fernando  
Valley  
Palmdale Sub-Office  
1050 E. Palmdale Blvd. #204  
Palmdale, CA 93550

Region III – San Gabriel  
Valley  
3216 Rosemead Blvd.  
El Monte, CA 91731

Region III – San Gabriel Valley  
GAIN Cal-Learn Branch  
3220 Rosemead Blvd.  
El Monte, CA 91731

Region IV – Central and West  
County  
2910 W. Beverly Blvd.  
Los Angeles, CA 90057

Region IV – Central and West  
County  
Exposition Park Sub-Office  
3965 S. Vermont  
Los Angeles, CA 90037

Region V – South County  
2959 Victoria Street  
Rancho Dominguez, CA  
90221

Region VI – Southeast County  
5460 Bandini Blvd.  
City of Bell, CA 90201

Region VII – East San  
Fernando County  
3307 N. Glenoaks Blvd.  
Burbank, CA 91504

- 38.3 The notice sent by CONTRACTOR must indicate the position(s)/title(s) for vacant or new employment opportunity, description of same, requirements/qualifications for position(s), anticipated pay rate or salary schedule, the location where applications/request(s) for applications are being received, final date of acceptance for applications and any special circumstances relevant to the hiring procedure for said position(s).
- 38.4 CONTRACTOR is exempt from the provisions of this Section if it is a governmental entity.

### **39.0 TERMINATION FOR NON-ADHERENCE TO COUNTY LOBBYIST ORDINANCE**

CONTRACTOR and each County lobbyist or County lobbying firm as defined in Los Angeles County Code Section 2.160.010, retained by CONTRACTOR, shall fully comply with Chapter 2.160. Failure on the part of CONTRACTOR or any COUNTY lobbyist or COUNTY lobbying firm retained by CONTRACTOR to fully comply with the COUNTY Lobbyist Ordinance shall constitute a material breach of this Agreement upon which COUNTY may, in its sole discretion, immediately terminate or suspend this Agreement.

### **40.0 NOTICE OF DELAYS**

Except as otherwise provided herein, when either party to this Agreement has knowledge that any actual or potential situation is delaying or threatens to delay the timely performance of this Agreement, that party shall, within three (3) working days, give written notice thereof, including all relevant information with respect thereto, to the other party.

### **41.0 USE OF RECYCLED-CONTENT PAPER**

Consistent with the Board of Supervisors' policy to reduce the amount of solid waste deposited at the COUNTY landfills, the CONTRACTOR agrees to use recycled-content paper to the maximum extent possible on the project.

### **42.0 PROPRIETARY RIGHTS**

- 42.1 COUNTY and CONTRACTOR agree that all software, materials, data and information developed under and used in connection with this Agreement shall become the sole property of COUNTY, provided that CONTRACTOR may retain possession of all working papers prepared by CONTRACTOR. During and subsequent to the term of this Agreement, COUNTY shall have the right to inspect any and all such working papers, make copies thereof, and use the working papers and the information contained therein.
- 42.2 Any materials, data and information not developed under this Agreement, which CONTRACTOR considers to be proprietary and confidential, shall be plainly and prominently marked by CONTRACTOR as "TRADE SECRET," "PROPRIETARY," or "CONFIDENTIAL."
- 42.3 COUNTY will use reasonable means to ensure that CONTRACTOR's proprietary and confidential materials, data and information are safeguarded and held in confidence. However, COUNTY will notify CONTRACTOR of any Public Records request for items described in Section 42.2. COUNTY agrees not to reproduce or distribute such

materials, data and information to non-COUNTY entities without the prior written permission of CONTRACTOR.

42.4 Notwithstanding any other provision of this Agreement, COUNTY shall not be obligated in any way under Section 42.3 for:

42.4.1 Any material, data and information not plainly and prominently marked with restrictive legends as set forth in Section 42.2;

42.4.2 Any materials, data and information covered under Section 42.1; and

42.4.3 Any disclosure of any materials, data and information which COUNTY is required to make under the California Public Records Act or otherwise by law.

42.5 CONTRACTOR shall protect the security of and keep confidential all materials, data and information received or produced under this Agreement. Further, CONTRACTOR shall use whatever security measures are necessary to protect all such materials, data and information from loss or damage by any cause, including, but not limited to, fire and theft.

42.6 CONTRACTOR shall not disclose to any party any information identifying, characterizing or relating to any risk, threat, vulnerability, weakness or problem regarding data security in COUNTY's computer systems or to any safeguard, countermeasure, contingency plan, policy or procedure for data security contemplated or implemented by COUNTY, without COUNTY's prior written consent.

42.7 The provisions of Sections 42.4, 42.5, and 42.6 shall survive the expiration or termination of this Agreement.

#### **43.0 FIXED ASSETS**

Title to all fixed assets purchased with COUNTY funds designated by the County for that purpose under this Agreement shall remain with COUNTY. A "Fixed Asset" is defined hereunder as any equipment costing Five hundred dollars (\$500.00) or more, with a useful life of more than two (2) years. Such assets shall be maintained and repaired by CONTRACTOR during the term of this Agreement. CONTRACTOR shall provide an accounting of such assets at the termination or expiration of this Agreement and shall deliver same to COUNTY upon COUNTY's written request. CONTRACTOR shall have the option upon the expiration or termination of the Agreement to acquire such assets at a price to be mutually agreed upon by COUNTY and CONTRACTOR.

#### **44.0 CHILD ABUSE PREVENTION REPORTING**

- 44.1 CONTRACTOR agrees that the safety of the child will always be the first priority. To ensure the safety of children, CONTRACTOR will immediately notify COUNTY and the Child Abuse Hotline whenever CONTRACTOR reasonably suspects that a child has been a victim of abuse and/or is in danger of future abuse. The CONTRACTOR will remain with the child if imminent risk is present.
- 44.2 CONTRACTOR shall ensure that all known or suspected instances of child abuse are reported to a child protective agency as defined in Section 11164, et. Seq. of the Penal Code. This responsibility shall include:
- 44.2.1 A requirement that all employees, consultants, or agents performing services under this Agreement who are required by Penal Code, Section 11166(a), to report child abuse, sign a statement that he or she knows of the reporting requirements and will comply with them.
- 44.2.2 The establishment of procedures to ensure reporting even when employees, consultants or agents who are not required to report child abuse under California Penal Code Section 11166, gain knowledge of, or reasonably suspect that a child had been a victim of abuse or neglect.
- 44.2.3 The assurance that all employees of CONTRACTOR and subcontractors understand that the safety of the child is always the first priority.

#### **45.0 COMMUNITY BUSINESS ENTERPRISES PROGRAM**

In accordance with COUNTY policy, CONTRACTOR has submitted a true and correct copy of Certification Application and is attached as Exhibit D.

#### **46.0 AUTHORIZATION WARRANTY**

CONTRACTOR represents and warrants that the signatory to this Agreement is fully authorized to obligate CONTRACTOR hereunder and that all corporate acts necessary to the execution of the Agreement have been accomplished.

#### **47.0 DISPUTE RESOLUTION PROCEDURE**

- 47.1 CONTRACTOR and COUNTY agree to act promptly and diligently to mutually resolve any disputes which may arise with respect to this Agreement. All such disputes shall be subject to the provisions of this Section 47.0

- 47.2 CONTRACTOR and COUNTY agree that, the existence and details of a dispute notwithstanding, both parties shall continue without delay their performance hereunder, except for any performance which COUNTY determines should be delayed as a result of such dispute. COUNTY shall continue to pay sums not in dispute, during any such period of continued performance.
- 47.3 In the event of any dispute between the parties with respect to this Agreement, CONTRACTOR and COUNTY shall submit the matter to their respective Program Managers for the purpose of endeavoring to resolve such dispute.
- 47.4 In the event that the Program Managers are unable to resolve the dispute within a reasonable time not to exceed five (5) working days from the date of submission of the dispute to them, then the matter shall immediately be submitted to CONTRACTOR's Vice President and County's Regional Administrator for further consideration and discussion to attempt to resolve the dispute.
- 47.5 In the event that CONTRACTOR's Vice President and County's Regional Administrator are unable to resolve the dispute within a reasonable time not to exceed five (5) days from the date of submission of the dispute to them, then the matter shall immediately be submitted to CONTRACTOR's President and to the Director of DCFS for further consideration and discussion to attempt to resolve the dispute.
- 47.6 All disputes utilizing this dispute resolution procedure shall at each and every level of escalation be documented in writing by each party and shall state the specifics of each alleged dispute and all actions taken. The parties shall act in good faith to resolve all disputes. At all levels described in this Section 47.0, the efforts to resolve a dispute shall be undertaken by conference between the parties' respective representatives, either orally (by face-to-face meeting or by telephone), or in writing (by exchanging of correspondence).
- 47.7 Notwithstanding any other provision of this Agreement, COUNTY's right to terminate this Agreement pursuant to Section 23.0, Termination for Contractor's Default, Section 25.0, Termination for Convenience, or any other termination provision hereunder, and COUNTY's right to seek injunctive relief to enforce the provisions of Section 42.0, Proprietary Rights and Section 31.0, Confidentiality, shall not be subject to this Section 47.0, Dispute Resolution Procedure.

## **48.0 COMPLIANCE WITH JURY SERVICE PROGRAM**

This Contract is subject to the provisions of the COUNTY's ordinance entitled Contractor Employee Jury Service ("Jury Service Program") as codified in Sections 2.203.010 through 2.203.090 of the Los Angeles County Code, a copy of which is attached hereto as Exhibits K and K1 incorporated by reference into and made a part of the Contract.

### **48.1 Written Employee Jury Service Policy**

48.1.1 Unless CONTRACTOR has demonstrated to the COUNTY's satisfaction either that CONTRACTOR is not a "Contractor" as defined under the Jury Service Program (Section 2.203.020 of the County Code) or that CONTRACTOR qualifies for an exception to the Jury Service Program (2.203.070 of the County Code), CONTRACTOR shall have and adhere to a written policy that provides that its Employees shall receive from the CONTRACTOR, on an annual basis, no less than five (5) days of regular pay for actual jury service. The policy may provide that Employees deposit any fees received for such jury service with the CONTRACTOR or that the CONTRACTOR deduct from the Employee's regular pay the fees received for jury service.

48.1.2 For purposes of this Section, "Contractor" means a person, partnership, corporation or other entity which has a contract with the COUNTY or a subcontract with a COUNTY contractor and has received or will receive an aggregate sum of \$50,000 or more in any 12-month period under one or more COUNTY contracts or subcontracts. "Employee" means any California resident who is a full time employee of CONTRACTOR. "Full time" means forty (40) hours or more worked per week, or a lesser number of hours if the lesser number is a recognized industry standard and is approved as such by the COUNTY. If CONTRACTOR uses any subcontractor to perform services for the COUNTY under the CONTRACT, the subcontractor shall also be subject to the provisions of this Section. The provisions of this Section shall be inserted into any such subcontract agreement and a copy of the Jury Service Program shall be attached to the agreement.

48.1.3 If CONTRACTOR is not required to comply with the Jury Service Program when the Contract commences, CONTRACTOR shall have a continuing obligation to review the applicability of its "exception status" from the Jury Service Program, and CONTRACTOR shall immediately notify COUNTY if CONTRACTOR at any time either comes within the Jury Service Program's definition of "Contractor" or if CONTRACTOR no longer



qualifies for an exception to the Program. In either event, CONTRACTOR shall immediately implement a written policy consistent with the Jury Service Program. The COUNTY may also require, at any time during the Contract and at its sole discretion, that CONTRACTOR demonstrate to the COUNTY's satisfaction that CONTRACTOR either continues to remain outside of the Jury Service Program's definition of "Contractor" and/or that CONTRACTOR continues to qualify for an exception to the Program.

48.1.4 CONTRACTOR's violation of this Section of the contract may constitute a material breach of the Contract. In the event of such material breach, COUNTY may, in its sole discretion, terminate the Contract and/or bar CONTRACTOR from the award of future COUNTY contracts for a period of time consistent with the seriousness of the breach.

## **49.0 INTERPRETATION OF CONTRACT**

### **49.1 Validity**

The invalidity, unenforceability, or illegality of any provision of this Agreement shall not render the other provisions thereof invalid, unenforceable, or illegal.

### **49.2 Governing Laws, Jurisdiction and Venue**

This Agreement shall be construed in accordance with and governed by the laws of the State of California. CONTRACTOR agrees and consents to the exclusive jurisdiction of the courts of the State of California for all purposes regarding this Agreement and further agrees and consents that venue of any action brought hereunder shall be exclusively in the County of Los Angeles, California.

### **49.3 Waiver**

Any waiver by COUNTY of any breach of any one or more of the covenants, conditions, terms and agreements herein contained shall not be construed to be a waiver of any subsequent or other breach of the same or of any other covenant, condition, term or agreement herein contained, nor shall failure on the part of COUNTY to require exact, full and complete compliance with any of the covenants, conditions, terms or agreements herein contained be construed as in any manner changing the terms of this Agreement or stopping COUNTY from enforcing the full provisions thereof.

**COUNTY OF LOS ANGELES  
DEPARTMENT OF CHILDREN AND FAMILY SERVICES**

**EARLY START TO EMANCIPATION PROGRAM**

IN WITNESS WHEREOF, the Board of Supervisors of the County of Los Angeles has caused this Agreement to be subscribed by its Chair and the seal of such Board to be hereto affixed and attested by the Executive Office thereof, and CONTRACTOR has caused this Agreement to be subscribed in its behalf by its duly authorized officer on the day, month and year first above written, \_\_\_\_\_. The persons signing on behalf of the CONTRACTOR warrants under penalty of perjury that they are authorized to bind the CONTRACTOR.

COUNTY OF LOS ANGELES

By \_\_\_\_\_  
Chair, Board of Supervisors

ATTEST:

VIOLET VARONA-LUKENS  
Executive Officer-Clerk of the  
Los Angeles County  
Board of Supervisors

By \_\_\_\_\_

The Community College  
Foundation \_\_\_\_\_

By \_\_\_\_\_

Name \_\_\_\_\_

Title \_\_\_\_\_

By \_\_\_\_\_

Name \_\_\_\_\_

Title \_\_\_\_\_

\_\_\_\_\_  
Tax Identification Number

APPROVED AS TO FORM:

BY THE OFFICE OF COUNTY COUNSEL  
LLOYD W. PELLMAN, County Counsel

BY \_\_\_\_\_  
Deputy County Counsel

## **EXHIBIT A**

### **EARLY START TO EMANCIPATION PROGRAM (ESTEP) STATEMENT OF WORK**

**EARLY START TO EMANCIPATION PROGRAM (ESTEP)  
STATEMENT OF WORK**

**BACKGROUND**

The Community College Foundation, hereinafter referred to as “CONTRACTOR”, is contracted by the Department of Children and Family Services (DCFS) to assist in improving outcomes which lead to successful emancipation for youth placed in out of home care under the supervision of the Department of Children and Family Services or the Probation Department. Through DCFS and Probation Department referrals, CONTRACTOR initiates emancipation preparation assessments for youth placed in out of home care and provides academic tutoring and various life-skills building workshops/seminars/practicums as set forth in this Statement of Work.

The DCFS Emancipation Initiative and recently the John H. Chaffee Foster Care Independence Act were created to develop and implement a multidisciplinary service delivery system. The system identifies and supports foster/probation youth through various social, behavioral, and educational activities beginning at age 14. The goal of this effort is to create a climate of realistic and consistent expectations that foster youth complete their secondary education and develop socially acceptable behavioral skills necessary for furthering their education or entering the workforce as productive members of society.

**PROGRAM OBJECTIVES**

The Early Start to Emancipation Program (ESTEP) is designed to assist foster/probation teens to prepare for emancipation. The objectives are:

1. To conduct a baseline emancipation preparedness assessment of youth ages 14 and 15.
2. To determine health, social and academic strengths and deficiencies in the following five domains:
  - a. basic academic knowledge skills;
  - b. career and vocational development skills;
  - c. daily living skills;
  - d. survival skills; and
  - e. interpersonal and social skills.

3. To gather educational/academic levels in reading and mathematics to facilitate in the tutorial referral process.
4. To provide individual tutoring for 496 youth assessed at one to two years behind grade/age level in reading and/or math.
5. To identify and provide linkages to appropriate public or private resources that enhance strengths and correct deficiencies.
6. To motivate youth and caregivers to play a more active role in the short term and long-range emancipation planning process. To provide more direction for the youth through a series of group and individual workshops, seminars and practicums.
7. To introduce and facilitate the emancipation planning process by helping the youth and caregiver complete the Emancipation Preparation Contract (Attachment 4). The contract identifies the youth's perspectives of his/her educational progress, strengths, career goals, and support needs. The Emancipation Preparation Contract also provides direction to the caregiver and Children Services Worker (CSW) or Probation Officer (PO) to assist the youth to achieve and/or re-evaluate his/her goals and priorities.
8. CONTRACTOR shall assess 1650 youth, enroll 792 youth in workshops/seminars/practicum activities and tutor 496 youth provided that DCFS and Probation Department (hereinafter referred to as COUNTY) make a sufficient number of referrals (see Attachment 3A and 3B). CONTRACTOR shall provide a continuum of services with compatible educational goals focused on foster/probation youth beginning age 14 which includes presentations to the youth about California Youth Connection and local teen clubs/support groups facilitated by DCFS. The youth are exposed to the educational environment of community college campuses and other resources that may be of assistance them.

An integrated approach to emancipation planning will help improve outcomes for youth, enable them to adapt and become productive members of society. The focus of this program provides essential services to foster/probation youth preparing to emancipate from the system.

ESTEP will provide the results of the Educational Assessment Form, Attachment 1, and the Emancipation Preparation Contract, Attachment 4, to the case carrying Children Services Worker (CSW) or Probation Officer (PO). These tools should be used by the CSW/PO to recognize the youth's strengths and deficiencies and to refer the youth for prompt follow-up activities.

## **SCOPE OF WORK**

### **1.0 KEY CONTRACTOR PERSONNEL**

#### **1.1 Emancipation Preparation Advisors (EPA)**

CONTRACTOR shall provide twelve (12) full-time Emancipation Preparation Advisors (EPA). EPA shall conduct assessment(s) as set forth in this Statement of Work utilizing the Educational Assessment Form (Attachment 1). The EPA shall work closely with DCFS' Children's Social Worker (CSW) or the Probation Department's Probation Officer (PO) for each individual case to establish goals, complete Emancipation Preparation Contracts (Attachment 4), and provide additional services as prescribed herein.

The EPA provided by CONTRACTOR under this agreement shall possess, at a minimum, the following qualifications:

Bachelor's Degree from an accredited university, with an academic concentration in education, psychology (including adolescent), counseling, child development or a related field.

-or-

Former foster youth currently enrolled at an accredited university, and who is within one (1) year of completion of a Bachelor's Degree.

-and-

Have at least one (1) year paid or verifiable volunteer experience in an educational and culturally diverse setting as an accredited teacher, teacher's aid, tutor for high school/college level students, guidance counselor, regional occupational program instructor, or work in a related career development or job training program whose primary focus is teenagers.

Two (2) of the EPA personnel hired to perform service under this Agreement must be bilingual. All EPA must have the ability to access a translator or another bilingual resource during the course of all service delivery.

**1.2 TUTORS**

The one-on-one tutoring of 456 youth shall be provided by 112 Community College students selected by CONTRACTOR who have completed at least 15 semester credits, and have a grade point average of 2.5 or higher in academic subjects. CONTRACTOR shall provide reimbursement for tutors at an average rate of \$11 per hour based on experience.

Each tutor shall individually serve at least two (2) youth and no more than six (6) youth with an average of four (4) youth per tutor for a total of 456 youth. Tutors will be compensated for time spent tutoring youth, participating in training, preparing paper work, and attending supervision meetings.

CONTRACTOR shall recruit and train 112 tutors who will be deployed to tutor youth at the youth's home.

**1.3 MASTER TUTORS**

The supervision of tutors and one-on-one tutoring of 40 youth shall be provided by twelve (12) part-time Master Tutors. Master Tutors shall be employees who have two or more years experience at the level of tutor. CONTRACTOR shall provide compensation for Master Tutors at an average rate of \$15 per hour.

CONTRACTOR shall provide one part-time master tutor for each community college location for a total of twelve (12) master tutors which shall tutor 40 youth at the youth's home.

**1.4 PEER COUNSELOR**

CONTRACTOR shall provide 24 part-time peer counselors who have completed or are in the process of completing the Early Start to Emancipation Program or the Independent Living Program. These individuals will mentor participating youth by acting as role models in the ESTEP program's workshops/seminars/practicums.

**1.5 CONTRACTOR shall provide administrative management personnel listed in Exhibit B, Budget. These positions shall be: Regional Director, Program Manager and Program Coordinator as specified in Exhibit B, Budget, and shall be responsible for overall program coordination; shall interface as necessary with COUNTY'S Program Manager; and shall oversee the daily operation and**

provision of services by CONTRACTOR personnel as specified in this Statement of Work.

**1.6 Additional Staffing**

CONTRACTOR shall provide additional administrative, support and clerical staff as necessary to ensure the success of CONTRACTOR in meeting the tasks set forth in this Agreement. In no instance shall CONTRACTOR'S cost for staffing exceed the amounts indicated in Exhibit B, Budget.

**2.0 ASSESSMENT**

CONTRACTOR's EPA shall perform an assessment of 1650 foster youth ages 14 and 15 referred to the ESTEP program by COUNTY during the term of this Agreement. CONTRACTOR shall assess youth within ninety (90) days of receipt of COUNTY's referral.

The assessment shall be completed by the EPA, youth, and caregiver on the date of the assessment in the home of the youth and caregiver (whenever possible) and shall be approximately two (2) hours in length. Depending on each youth's individual situation, the following may also be consulted: school personnel, DCFS Public Health Nurse, Emancipation Assistant/Community Worker, and/or specific person(s) as identified by CSW/PO.

The assessment shall address and measure the youth's current skill level, including, but not limited to the following, as applicable:

**2.1 Basic Academic Knowledge and School Behavior**

- academic grade(s) earned;
- review of cumulative school record;
- review of attendance record;
- behavior in school;
- anticipated graduation date;
- course of study undertaken;
- current educational placement;
- status of any current remedial action prescribed or taken;
- and
- possible unmet educational needs.

**2.2 Career and Vocational Development**

- youth's understanding of career and vocational options;



- the extent to which the youth understands the relationship between education and career choices;
- awareness of potential relationship between volunteer work and early job seeking success;
- identify areas of interest for future educational placement or job development; and
- where to obtain a work permit.

**2.3 Daily Living Skills**

- money management;
- nutrition;
- hygiene; and
- transportation.

**2.4 Survival Skills**

- how to get emergency assistance;
- knowledge of risky behaviors (e.g., unsafe sex, alcohol and other drug abuse) as they relate to a variety of health issues (communicable diseases, early pregnancy, etc.); and
- understanding of the importance of preventive medical and dental care.

**2.5 Interpersonal and Social Development**

- peer relationships;
- communication skills;
- relationship between actions and consequences, cause and effect;
- goal setting anger management;
- problem solving ability; and
- immediate versus delayed gratification.

**2.6** The Case Activity Log (Attachment 5, DCFS form 1950) shall be completed by CONTRACTOR'S EPA. CONTRACTOR's EPA shall summarize his/her assessment of the youth in the Case Activity Log. The Case Activity Log shall then be submitted by CONTRACTOR's EPA to the youth's CSW/PO (depending upon origin of referral) within two (2) weeks following CONTRACTOR's assessment of youth. CONTRACTOR's EPA shall document in the Case Activity Log any incomplete assessment visits, including unsuccessful attempts by CONTRACTOR to schedule and re-visit youth, and reasons for CONTRACTOR's inability to complete an assessment of the youth. In the event that CONTRACTOR's EPA is

unable to complete an assessment, CONTRACTOR shall submit the Case Activity Log to the CSW/PO within one calendar month of the incomplete assessment visit or date of attempted visit.

### **3.0 DEVELOPMENT OF EMANCIPATION PREPARATION CONTRACT WITH YOUTH**

- 3.1 During the assessment meeting, CONTRACTOR's EPA shall introduce Emancipation services, provide an overview of the Emancipation Preparation Contract (Attachment 4), and the Assessment/Referral process to the youth and caregiver. The EPA shall explain the linkage between the CONTRACTOR's services (tutoring, motivational/skill-building workshops and practicums) and the Emancipation Preparation Contract. The EPA shall explain the multi-year support commitment from DCFS towards successful emancipation, making the youth and caregiver aware of what to expect prior to, during, and following emancipation.
- 3.2 CONTRACTOR's EPA shall assist the youth and caregiver in completing the Emancipation Preparation Contract (Attachment 4) with each youth assessed as prescribed in Paragraph 2.0. The Emancipation Preparation Contract is to reflect the youth's ideas and goals at the time of the visit. The intention of completing this Emancipation Preparation Contract is to aid adults (CSW/PO, caregiver, and EPA) and the youth to understand the youth's perspective, help him/her make informed choices, outline the steps necessary to achieve a goal, help to direct or redirect the youth if goals change or progress is delayed. The Emancipation Preparation Contract process is an exercise to help the youth start thinking about his/her future in a non-judgmental, non-threatening way and to show him/her how the EPA, CSW/PO and caregiver are prepared to assist. Goals are expected to change as the youth matures.
- 3.3 The Emancipation Preparation Contract is a planning document not a legal document. It is a plan developed by the youth, caregiver, and the EPA. The signatures of the youth, caregiver and EPA on the document signify a commitment to work towards/comply with the specific goals/responsibilities listed in the document. The Emancipation Preparation Contract shall be completed during the assessment meeting at the youth's home.
- 3.4 Copies of each signed Emancipation Preparation Contract shall be submitted to the CSW/PO and COUNTY's Program Manager within two (2) weeks of the assessment. For all youth assessed, CONTRACTOR shall ensure that a signed Emancipation

Preparation Contract is completed, or if not completed, specifically documented on the Case Activity Log (DCFS Form 1950, Attachment 5), as to the reason for non-compliance and corrective action attempted by the EPA.

#### 4.0 WORKSHOPS/SEMINARS/PRACTICUMS

4.1 During the term of this Agreement, CONTRACTOR's EPA and peer counselors shall provide twelve (12) four (4) hour workshop/seminars and six (6) four (4) hour practicums at each of the twelve (12) community college locations identified under the ESTEP program in Attachment 7. CONTRACTOR shall provide 144 workshops/seminars and 72 practicums to 792 foster/probation youth. Youth that have completed the assessment and are invited/willing to attend workshops/seminars/practicums will be scheduled to attend four (4) workshops/seminars followed by two (2) practicums. Each workshop/seminar shall provide assistance and instruction to youth according to his/her identified needs. Topics to be discussed are:

- Introduction to the Emancipation Process;
- High School (how to get what you need);
- Relationships (professional, Personal);
- Health, Coping skills, lifestyle choices

#### 4.2 Practicums

Practicum activities will follow the four (4) workshop/seminars and provide hands-on experiences for the youth involved. Practicums will take place at various predetermined off site locations. Contractor shall determine which two (2) four (4) hour practicums will be chosen to accompany the workshops/seminars. The practicum topics are listed below and explained in more detail in Attachment 6.

- Practicum 1: Grocery Shopping
- Practicum 2: Laundry
- Practicum 3: Opening Bank Accounts
- Practicum 4: Obtaining a California Identification Card
- Practicum 5: Public Transportation
- Practicum 6: Applying For a Job

4.3 CONTRACTOR shall develop and provide to the COUNTY'S Program Manager, a master event calendar within thirty (30) days of the execution of this Agreement. The master event calendar shall be a twelve (12) month forecast of events including the dates

of all workshops/seminars and tentative practicums for each of the twelve (12) community college locations identified in Exhibit H. COUNTY'S Program Manager must approve the dates set forth in the master event calendar. Approval will be given by COUNTY'S Program Manager in written form and must be received by CONTRACTOR prior to release of any schedule of events.

- 4.4 The CONTRACTOR shall submit a Case Activity Log (DCFS Form 1950, Attachment 5) to COUNTY'S Program Manager indicating the youth's time spent in the four (4) workshops/seminars and two (2) practicums within two (2) weeks of the youth's completion of the workshops/seminars and practicums. Each Case Activity Log sheet shall clearly identify first and last name of the youth, State case number, and placement type.

## 5.0 TUTORING

- 5.1 CONTRACTOR shall assign an individual tutor to youth who are assessed to be one to two years behind grade/age level in reading and/or math.
- 5.2 CONTRACTOR shall refer those youth who are assessed three or more years behind grade/age level in reading and/or math to COUNTY's Program Manager and CSW/PO for alternative services through DCFS or Probation Department resources.
- 5.3 The tutoring shall focus on improving the youth's reading, writing and math proficiency using an individualized multilevel curriculum to build reading comprehension, basic math and reasoning ability. CONTRACTOR shall provide 50 hours of one-on-one tutoring within a six (6) month period for each eligible youth.
- 5.4 Tutoring shall be conducted at the home of the youth or at a local community site such as a library. CONTRACTOR will provide sufficient tutors to serve 496 youth for 50 hours of tutoring per youth. Tutors will also be compensated an additional 15 hours per youth for attending training, completing paperwork, and attending supervision meetings.

## 6.0 MONTHLY REPORT

CONTRACTOR shall submit by mail to COUNTY's Program Manager a Monthly Report to be received by the 15<sup>th</sup> day of each month that includes

the four (4) sections briefly described below and in a format consistent with Attachment 2. Monthly reports shall be addressed to:

Department and Children and Family Services  
William Gay, Program Manager  
1373 East Center Court Drive, Suite 200  
Covina, California 90020

**6.1 Monthly Report Cover**

The monthly report cover shall consist of a summary of each of the three sections below, sorted by the type of placement and include the number of youth receiving assessments, attending workshops, and number of tutoring hours for the reported month as well as year to date totals of same.

Type of placement is hereafter defined for this report as: (Foster Family Agency (FFA); Foster and Kinship; Group Home; or other placements),

**6.2 Foster Youth Assessment Report**

The Foster Youth Assessment Report shall consist of a list of all youth that have received an assessment. The list shall be sorted by placement type, then sub-sorted by date of assessment; case number; full name of youth; date of birth; age; CSW/PO; EPA; DCFS Office location; and total number of youth served for each type of placement.

**6.3 Foster Youth Tutoring Report**

The Foster Youth Tutoring Report shall consist of a list of all youth that have or are receiving tutoring. The list shall be sorted by placement type, then sub-sorted by name of tutor; dates youth received tutoring; case number; full name of youth; date of birth; CSW/PO; DCFS Office location; number of hours youth received tutoring for the reported month; running total of hours youth received tutoring; subject tutored; total number of tutoring hours (per tutor); number of Foster Youth that completed fifty (50) hours of tutoring; and total number youth served for each type of placement.

**6.4 Ongoing Workshops Report**

The Ongoing Workshops Report shall consist of a list of all youth that have attended a workshop and/or practicum. The list shall be sorted by placement type, then sub-sorted by case number; full name of youth; date of birth; CSW/PO; workshop/practicum ID; date of workshop/practicum; and total number of youth served for each type of placement.

**7.0 FACILITIES PROVIDED BY CONTRACTOR**

7.1 CONTRACTOR shall maintain office space for staff (EPA's). EPA's shall retain high visibility in DCFS Regional offices (within their designated community college areas) by maintaining on going communication with CSWs in the regional offices regarding youth enrolled in ESTEP.

7.2 CONTRACTOR shall be responsible for securing appropriate space on community college campuses for the skills building workshops/seminars.

**8.0 CONCLUSION ASSESSMENT**

During the course of service provision, at least two (2) of CONTRACTOR's EPAs, and one (1) of CONTRACTORS administrators (identified to provide service under this agreement) shall work with COUNTY'S Program Manager to develop a Client Satisfaction Survey and a conclusion assessment tool comparing youth's current educational/social/behavioral level with that level assessed at the beginning of that youth's enrollment in the ESTEP program. COUNTY's Program Manager shall provide a list to the EPA comprising 10% of youth and caregivers for whom service was provided under this Agreement. EPA shall give the conclusion assessment and Client Satisfaction Survey to the youth and caregivers listed within 15 days of receipt of such list. CONTRACTOR shall submit to the COUNTY's Program Manager and CSW/PO a copy of each completed conclusion assessment and Client Satisfaction Survey within thirty (30) days of the receipt of these documents from each youth and caregiver.

**QUALITY ASSURANCE****1.0 QUALITY ASSURANCE PLAN**

The CONTRACTOR shall establish and maintain a Quality Assurance Plan to assure that all COUNTY requirements as stated in this Agreement, are met or exceeded. A copy of this plan shall be submitted to the

COUNTY'S Program Manager within thirty (30) days of the execution of this Agreement and shall by reference herein be incorporated into this Agreement as Exhibit N. Revisions to this plan shall be provided to the COUNTY Program Manager within two (2) weeks of the revision. The original plan and any future changes shall include, but not be limited to the following:

- 1.1 A detailed process flow-chart highlighting all steps in the identification, assessment and tutorial process. Procedural methods used to insure that the services provided fully conform to COUNTY contractual and applicable regulatory requirements. Process audit checkpoints that insure delivery of compliant services.
- 1.2 The process and procedural methods utilized to insure uninterrupted service to COUNTY in the event of a strike by the CONTRACTOR's employees.

## **2.0 QUALITY ASSURANCE EVALUATOR**

The COUNTY Program Manager will evaluate the CONTRACTOR's performance under this contract to insure that the quality of service performed fully meets the requirements set forth in this Statement of Work, the COUNTY's Performance Requirement Summary (EXHIBIT A-1), the CONTRACTOR's quality assurance processes and procedures, this Agreement, and such processes and procedures as may be necessary to ascertain CONTRACTOR compliance with this contract and applicable regulatory requirements.

- 2.1 The COUNTY's Performance Requirement Summary (EXHIBIT A-1) is a summary of key deliverables which describes the anticipated quality/quantity of service to be provided. The COUNTY Program Manager will utilize the Performance Requirement Summary as an instrument for evaluating, measuring and monitoring the program.

**ATTACHMENT 1**

**EDUCATIONAL ASSESSMENT FORM**



## **ATTACHMENT 2**

### **SAMPLE MONTHLY REPORT**

## ESTEP MONTHLY REPORT FOR THE MONTH OF: JUNE 2002

**Date:** July 2, 2002

**To:** CPMs Name

**From:** Contractors Project Manager's Name

**c:**

### SERVICE: ASSESSMENTS

		YEAR TO DATE
<u>TYPE OF PLACEMENT</u>	# YOUTH	# YOUTH
FFA	02	102
Foster and Kinship	04	104
Group Home	02	102
*Other	02	102
<b>TOTAL</b>	<b>10</b>	<b>110</b>

### SERVICE: TUTORING HOURS

TYPE OF PLACEMENT	# HOURS	# YOUTH	# HOURS
FFA	46	04	146
Foster and Kinship	36	03	136
Group Home	16	01	116
*Other	16	01	116
<b>TOTAL</b>	<b>114</b>	<b>09</b>	<b>628</b>

### SERVICE: WORKSHOPS/SEMINARS

TYPE OF PLACEMENT	# YOUTH	# YOUTH
FFA	02	102
Foster and Kinship	04	104
Group Home	02	102
*Other	02	102
<b>TOTAL</b>	<b>10</b>	<b>110</b>

\*Includes non-categorized placements

# Early Start to Emancipation Preparation Program

## Foster Youth Assessments Report

For the Period of: June 2002

### Placement Type: FFA

<u>Date</u>	<u>Case Number</u>	<u>Name</u>	<u>DOB</u>	<u>Age</u>	<u>CSW</u>	<u>EPA</u>	<u>DCFS Office</u>
06/07/02	1234567	Jane Doe	01/02/88	14	CSW NAME	EPA NAME	PASADENA
06/08/02	8910111	John Doe	03/04/88	14	CSW NAME	EPA NAME	PASADENA

**Placement Count:** 2

### Placement Type: Foster Home

<u>Date</u>	<u>Case Number</u>	<u>Name</u>	<u>DOB</u>	<u>Age</u>	<u>CSW</u>	<u>EPA</u>	<u>DCFS Office</u>
06/07/02	1234567	Jane Doe	01/02/88	14	CSW NAME	EPA NAME	PASADENA
06/08/02	8910111	John Doe	03/04/88	14	CSW NAME	EPA NAME	PASADENA

**Placement Count:** 2

### Placement Type: Group Home

<u>Date</u>	<u>Case Number</u>	<u>Name</u>	<u>DOB</u>	<u>Age</u>	<u>CSW</u>	<u>EPA</u>	<u>DCFS Office</u>
06/07/02	1234567	Jane Doe	01/02/88	14	CSW NAME	EPA NAME	PASADENA
06/08/02	8910111	John Doe	03/04/88	14	CSW NAME	EPA NAME	PASADENA

**Placement Count:** 2

### Placement Type: Kinship

<u>Date</u>	<u>Case Number</u>	<u>Name</u>	<u>DOB</u>	<u>Age</u>	<u>CSW</u>	<u>EPA</u>	<u>DCFS Office</u>
06/07/02	1234567	Jane Doe	01/02/88	14	CSW NAME	EPA NAME	PASADENA
06/08/02	8910111	John Doe	03/04/88	14	CSW NAME	EPA NAME	PASADENA

**Placement Count:** 2

### Placement Type: Other

<u>Date</u>	<u>Case Number</u>	<u>Name</u>	<u>DOB</u>	<u>Age</u>	<u>CSW</u>	<u>EPA</u>	<u>DCFS Office</u>
06/07/02	1234567	Jane Doe	01/02/88	14	CSW NAME	EPA NAME	PASADENA
06/08/02	8910111	John Doe	03/04/88	14	CSW NAME	EPA NAME	PASADENA

**Placement Count:** 2

**Total Number of Assessments:** 10

## Early Start to Emancipation Preparation Program

# Foster Youth Tutoring Report

For the Period of: June 2002

**Placement Type:** FFA

**Tutor:** Tutors Name

<u>Date</u>	<u>Case Number:</u>	<u>Youth Name:</u>	<u>DOB:</u>	<u>CSW:</u>	<u>Office:</u>	<u>Hours</u>	<u>Total Hours</u>	<u>Subject:</u>
06/07/02	1234567	Jane Doe	01/02/88	CSW NAME	PASADENA	16	16	MATH/READING
06/07/02	8910111	John Doe	03/04/88	CSW NAME	PASADENA	10	10	MATH

**Tutor Total Hours:** 26

**Tutor:** Tutors Name

<u>Date</u>	<u>Case Number:</u>	<u>Youth Name:</u>	<u>DOB:</u>	<u>CSW:</u>	<u>Office:</u>	<u>Hours</u>	<u>Total Hours</u>	<u>Subject:</u>
06/07/02	1234567	Jane Doe	01/02/88	CSW NAME	PASADENA	10	10	MATH/READING
06/07/02	8910111	John Doe	03/04/88	CSW NAME	PASADENA	10	10	READING

**Tutor Total Hours:** 20

**Placement Type Hours:** 46

**Placement Count:** 04

**Placement Type:** Foster Home

**Tutor:** Tutors Name

<u>Date</u>	<u>Case Number:</u>	<u>Youth Name:</u>	<u>DOB:</u>	<u>CSW:</u>	<u>Office:</u>	<u>Hours</u>	<u>Total Hours</u>	<u>Subject:</u>
06/07/02	1234567	Jane Doe	01/02/88	CSW NAME	PASADENA	16	16	MATH/READING
06/07/02	8910111	John Doe	03/04/88	CSW NAME	PASADENA	10	10	MATH

**Tutor Total Hours:** 26

**Placement Type Hours:** 26

**Placement Count:** 02

**Placement Type:**    Group Home

**Tutor:**    Tutors Name

<u>Date</u>	<u>Case Number:</u>	<u>Youth Name:</u>	<u>DOB:</u>	<u>CSW:</u>	<u>Office:</u>	<u>Hours</u>	<u>Total Hours</u>	<u>Subject:</u>
06/07/02	1234567	Jane Doe	01/02/88	CSW NAME	PASADENA	16	16	MATH/READING

**Tutor Total Hours:**        16

**Placement Type Hours:**        16

**Placement Count:**                01

**Placement Type:**    Kinship

**Tutor:**    Tutors Name

<u>Date</u>	<u>Case Number:</u>	<u>Youth Name:</u>	<u>DOB:</u>	<u>CSW:</u>	<u>Office:</u>	<u>Hours</u>	<u>Total Hours</u>	<u>Subject:</u>
06/07/02	8910111	John Doe	03/04/88	CSW NAME	PASADENA	10	10	MATH

**Tutor Total Hours:**        10

**Placement Type Hours:**        10

**Placement Count:**                01

**Placement Type:**    Other

**Tutor:**    Tutors Name

<u>Date</u>	<u>Case Number:</u>	<u>Youth Name:</u>	<u>DOB:</u>	<u>CSW:</u>	<u>Office:</u>	<u>Hours</u>	<u>Total Hours</u>	<u>Subject:</u>
06/07/02	1234567	Jane Doe	01/02/88	CSW NAME	PASADENA	16	16	MATH/READING

**Tutor Total Hours:**        16

**Placement Type Hours:**        16

**Placement Count:** 01

**Total Tutoring Hours:** 114

**Total Placement:** 9

Early Start to Emancipation Preparation Program  
**Workshops/Seminars Report**

For the Period of: June 2002

<u>Placement</u>	<u>Case Number</u>	<u>Name</u>	<u>Date of Birth</u>	<u>CSW</u>	<u>Workshop ID</u>	<u>Date</u>
<b><u>FFA</u></b>						
	1234567	Jane Doe	01/02/88	CSW NAME	123XYZ	06/15/02
	8910111	John Doe	03/04/88	CSW NAME	456XYZ	06/16/02
<b>Placement Count: 2</b>						
<b><u>Foster Home</u></b>						
	1234567	Jane Doe	01/02/88	CSW NAME	123XYZ	06/15/02
	8910111	John Doe	03/04/88	CSW NAME	456XYZ	06/16/02
<b>Placement Count: 2</b>						
<b><u>Group Home</u></b>						
	1234567	Jane Doe	01/02/88	CSW NAME	123XYZ	06/15/02
	8910111	John Doe	03/04/88	CSW NAME	456XYZ	06/16/02
<b>Placement Count: 2</b>						
<b><u>Kinship</u></b>						
	1234567	Jane Doe	01/02/88	CSW NAME	123XYZ	06/15/02
	8910111	John Doe	03/04/88	CSW NAME	456XYZ	06/16/02
<b>Placement Count: 2</b>						
<b><u>Other</u></b>						
	1234567	Jane Doe	01/02/88	CSW NAME	123XYZ	06/15/02
	8910111	John Doe	03/04/88	CSW NAME	456XYZ	06/16/02
<b>Placement Count: 2</b>						
<b>Total Attended: 10</b>						

### **ATTACHMENT 3**

**E-STEP DCFS REFERRAL (3A)**

**E-STEP PROBATION REFERRAL (3B)**



**E-STEP DCFS REFERRAL**  
**Early Start to Emancipation Preparation Program**  
**14-15 YEAR OLDS**  
**FAX: (818) 501-1945**

---

Youth's Name: \_\_\_\_\_

DOB: \_\_\_\_\_

Caregiver's Name: \_\_\_\_\_

Address: \_\_\_\_\_  
\_\_\_\_\_

Phone: (     ) \_\_\_\_\_

Placement Type:    ☐ Foster Home/Non FFA    ☐ Relative Care    ☐ Other

Case Name: \_\_\_\_\_ Case #: \_\_\_\_\_

CSW's Name: \_\_\_\_\_ Phone #: \_\_\_\_\_

Special Needs:    ☐ Medical    ☐ Educational    ☐ Other

---

Youth's Name: \_\_\_\_\_

DOB: \_\_\_\_\_

Caregiver's Name: \_\_\_\_\_

Address: \_\_\_\_\_  
\_\_\_\_\_

Phone: (     ) \_\_\_\_\_

Placement Type:    ☐ Foster Home/Non FFA    ☐ Relative Care    ☐ Other

Case Name: \_\_\_\_\_ Case #: \_\_\_\_\_

CSW's Name: \_\_\_\_\_ Phone #: \_\_\_\_\_

Special Needs:    ☐ Medical    ☐ Educational    ☐ Other

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Date Faxed:	Date EPA RCD:
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**E-STEP PROBATION REFERRAL**  
**Early Start to Emancipation Preparation Program**  
**14-15 YEAR OLDS**  
**FAX: (818) 501-1945**

**TO: VINNY D' AVERSO, COMMUNITY COLLEGE FOUNDATION**

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1) Youth's Name: \_\_\_\_\_ DOB: \_\_\_\_\_

Caregiver's Name: \_\_\_\_\_ Phone #: (\_\_\_\_) \_\_\_\_\_

Address: \_\_\_\_\_

Probation Officer's Name: \_\_\_\_\_ Phone #: (\_\_\_\_) \_\_\_\_\_

Area Office: \_\_\_\_\_ State #: \_\_\_\_\_

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2) Youth's Name: \_\_\_\_\_ DOB: \_\_\_\_\_

Caregiver's Name: \_\_\_\_\_ Phone #: (\_\_\_\_) \_\_\_\_\_

Address: \_\_\_\_\_

Probation Officer's Name: \_\_\_\_\_ Phone #: (\_\_\_\_) \_\_\_\_\_

Area Office: \_\_\_\_\_ State #: \_\_\_\_\_

---

3) Youth's Name: \_\_\_\_\_ DOB: \_\_\_\_\_

Caregiver's Name: \_\_\_\_\_ Phone #: (\_\_\_\_) \_\_\_\_\_

Address: \_\_\_\_\_

Probation Officer's Name: \_\_\_\_\_ Phone #: (\_\_\_\_) \_\_\_\_\_

Area Office: \_\_\_\_\_ State #: \_\_\_\_\_

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**ATTACHMENT 4**

**EMANCIPATION PREPARATION CONTRACT**  
(DCFS FORM 5205)

**ATTACHMENT 5**

**CASE ACTIVITY LOG**  
(DCFS FORM 1950)

**ATTACHMENT 6**

**EARLY START TO EMANCIPATION PROGRAM  
PRACTICUM CURRICULUM**

## **EARLY START TO EMANCIPATION PROGRAM PRACTICUM CURRICULUM**

### **Practicum 1: Grocery Shopping**

Desired Outcome: Youth demonstrates the ability to develop a shopping list to purchase necessary items for a planned meal. Youth should incorporate the use of discount coupons when shopping for items.

Deliverables: Pre and Post Test  
Written Shopping List  
Sales Receipts  
List of Participants

### **Practicum 2: Laundry**

Desired Outcome: Youth should be able to demonstrate their understanding of the correct way to do laundry by bringing their laundry to a Laundromat. The process should include sorting whites and colored clothing, using bleach and fabric softener appropriately and folding clothes when done.

Deliverables: Pre and Post Test  
Written description of process by Youth  
List of Participants

### **Practicum 3: Opening Bank Accounts**

Desired Outcome: Youth should be able to go to a bank and open a Bank Account, (savings or checking).

Deliverables: Pre and Post Test  
Photo copy of temporary bank book  
List of Participants

### **Practicum 4: Obtaining a California Identification Card**

Desired Outcome: Youth should be able to go to the California Department of Motor Vehicles and apply for a California Identification card.

Deliverables: Pre and Post Test  
Photo copy of temporary identification/receipt  
List of Participants

**Practicum 5: Public Transportation**

Desired Outcome: Youth should be able to demonstrate their understanding of the public transportation system by purchasing a ticket to travel on public transportation to a predetermined location.

Deliverables: Pre and Post Test  
Photo copy of the public transportation ticket  
List of Participants

**Practicum 6: Applying For a Job**

Desired Outcome: Youth should be able to create a resume and complete a job application.

Deliverables: Pre and Post Test  
Photo copy of a completed resume  
Photo copy of a completed job application  
List of Participants

## **ATTACHMENT 7**

### **COMMUNITY COLLEGE LOCATIONS**



## Los Angeles County Community College Partnerships



	ILP-Statewide	ILP- Los Angeles	MAPP/F2F/KEPS	ESTEP	Campus Per Mentoring	FKCE
Antelope Valley	✓	✓	✓	✓		✓
<u>Cerritos</u>		✓	✓			✓
Citrus	✓	✓	✓			✓
College of the Canyons		✓	✓			✓
Compton Community	✓	✓	✓	✓		✓
East Los Angeles	✓	✓	✓	✓		✓
Long Beach City		✓	✓	✓		✓
El Camino		✓	✓	✓		✓
Los Angeles City	✓	✓	✓			✓
Los Angeles Harbor		✓	✓			✓
Los Angeles Mission	✓	✓	✓	✓		✓
Los Angeles Pierce		✓	✓			✓
Los Angeles Southwest	✓	✓	✓	✓		✓
Los Angeles Trade-Tech		✓	✓	✓		✓
Los Angeles Valley		✓				
Mt. San Antonio	✓	✓	✓	✓	✓	✓
Pasadena City	✓	✓	✓	✓		✓
Rio Hondo	✓	✓	✓	✓		✓
West Los Angeles	✓	✓	✓	✓		✓
<b>Totals:</b>	<b>11</b>	<b>19</b>	<b>18</b>	<b>12</b>	<b>1</b>	<b>18</b>

ILP = Independent Living Skills Program  
 MAPP/FTF = Models Approaches To Partnerships in Parenting/Family To Family  
 KEPS = Kinship Education Preparation Support  
 ESTEP = Early Start To Emancipation Preparation  
 FKCE = Foster and Kinship Care Education – Funded through the Community College Chancellor’s Office

**EXHIBIT A-1**

**PERFORMANCE REQUIREMENT SUMMARY**

**PERFORMANCE REQUIREMENT SUMMARY**

Required Services	Performance Indicator	Acceptance Quality Level	Compliance Monitoring Method
1. CONTRACTOR shall perform an assessment of 1650 foster youth referred to the ESTEP program during the term of the Agreement. CONTRACTOR shall assess youth within 90 days of receipt of COUNTY's referral.	Monthly Report	100%	Program Manager review and approval of monthly report.
2. CONTRACTOR shall provide 144 workshop/seminars and 72 practicums to 792 youth during the term of the Agreement.	Monthly Report	100%	Program Manager review and approval of monthly report.
3. CONTRACTOR shall provide 50 hours of tutoring within a 6-month period for 496 youth identified through the ESTEP assessment process.	Monthly Report	100%	Program Manager review and approval of monthly report.

## **EXHIBIT B**

### **BUDGET**

**EXHIBIT C**

**CONTRACTOR'S EEO CERTIFICATION**

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Contractor's Name

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Address

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Internal Revenue Service Employer Identification Number

**GENERAL**

In accordance with the Section 22001, Administrative Code of the County of Los Angeles, the contractor, supplier, or vendor certifies and agrees that all persons employed by such firm, its affiliates, subsidiaries, or holding companies are and will be treated equally by the firm without regard to or because of race, religion, ancestry, national origin or sex and in compliance with all anti-discrimination laws of the United States of America and the State of California.

**CONTRACTOR'S CERTIFICATION**

- |    |  |         |        |
|----|--|---------|--------|
| 1. | The contractor has a written policy statement<br>] prohibiting discrimination in all phases of<br>employment.  | YES [ ] | NO [ ] |
| 2. | The contractor periodically conducts a self-<br>analysis or utilization analysis of its work force.  | YES [ ] | NO [ ] |
| 3. | The contractor has a system for determining if its<br>employment practices are discriminatory against<br>protected groups.   | YES [ ] | NO [ ] |
| 4. | Where problem areas are identified in employment<br>practices, the contractor has a system for taking<br>reasonable corrective action to include<br>establishment of goals or time tables. | YES [ ] | NO [ ] |

---

Name of Firm

---

Name and Title

---

Authorized Signature

---

Date

## LOS ANGELES COUNTY COMMUNITY BUSINESS ENTERPRISE (LAC/CBE) PROGRAM

### FIRM/ORGANIZATION INFORMATION

INSTRUCTIONS: All bidders responding to this solicitation must return this form for proper consideration of the bid. The information requested below is for statistical purposes only. On final analysis and consideration of award, contractor/vendor will be selected without regard to gender, race, creed, or color. Categories listed below are based on those described in 49 CFR §23.5.

**TYPE OF BUSINESS STRUCTURE:** \_\_\_\_\_

(Corporation, Limited Liability Company, Partnership, Sole Proprietorship, etc.)

**TOTAL NUMBER OF EMPLOYEES IN FIRM (including owners):** \_\_\_\_\_

**CULTURAL/ETHNIC COMPOSITION OF FIRM** (Partners, Associate Partners, Managers, Staff, etc.).  
Please break down the above total number of employees into the following categories:

	OWNERS/PARTNERS/ ASSOCIATE PARTNERS	MANAGERS	STAFF
Black/African American			
Hispanic/Latin American			
Asian American			
American Indian/Alaskan Native			
White			
<i>Based on the above categories, please indicate the total numbers of men and women in the firm:</i>			
Male			
Female			

**PERCENTAGE OF OWNERSHIP IN FIRM** Please indicate by percentage (%) how ownership of the firm is distributed.

	Black/ African American	Hispanic/Latin American	Asian American	American Indian/ Alaskan Native	White
Men	%	%	%	%	%
Women	%	%	%	%	%

**CERTIFICATION AS MINORITY, WOMEN, DISADVANTAGED, AND DISABLED VETERANS BUSINESS ENTERPRISES** Is your firm currently certified as a minority, women-owned, disadvantaged or disabled veterans business enterprise by a public agency? (If yes, complete the following and attach a copy of your notice of certification.)

M W D DV

Agency \_\_\_\_\_ Expiration Date \_\_\_\_\_

\_\_\_\_\_

Agency \_\_\_\_\_    \_\_\_\_ \_\_\_\_ \_\_\_\_ \_\_\_\_    Expiration Date  
\_\_\_\_\_

Agency \_\_\_\_\_    \_\_\_\_ \_\_\_\_ \_\_\_\_ \_\_\_\_    Expiration Date  
\_\_\_\_\_

Agency \_\_\_\_\_    \_\_\_\_ \_\_\_\_ \_\_\_\_ \_\_\_\_    Expiration Date  
\_\_\_\_\_

LEGEND: M = Minority; W = Women; D = Disadvantaged; DV = Disabled Veterans

<b>LAC/CBE SANCTIONS</b>
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1. A person or business shall not:
  - a. Knowingly and with the intent to defraud, fraudulently obtain, retain, attempt to obtain or retain, or aid another in fraudulently obtaining, retaining or attempting to obtain or retain, acceptance or certification as a minority or women business enterprise, or both, for the purposes of this article.
  - b. Willfully and knowingly make a false statement with the intent to defraud, whether by affidavit, report, or other representation, to a County official or employee for the purpose of influencing the acceptance or certification or denial of acceptance or certification of any entity as a minority or women business enterprise, or both.
  - c. Willfully and knowingly obstruct, impede, or attempt to obstruct or impede, any county official or employee who is investigating the qualifications of a business entity which has requested acceptance or certification as a minority or women business enterprise, or both.
  - d. Knowingly and with intent to defraud, fraudulently obtain, attempt or obtain, or aid another person or business in fraudulently obtaining or attempting to obtain, public moneys to which the person or business is not entitled under this article.
2. Any person or business who violates paragraph (1) shall be suspended from bidding on, or participating as contractor, subcontractor, or supplier in any County contract or project for a period of three years.
3. No County agency with the powers to award contracts shall enter into any contract with any person or business suspended for violating this section during the period of the person's or business' suspension. No awarding department shall award a contract to any contractor utilizing the services of any person or business as a subcontractor suspended for violating this section during the period of the person's or business suspension.

I acknowledge, that the undersigned, on behalf of himself or herself individually and on behalf of his or her business or organization, if any, is fully aware of the above policy of the County of Los Angeles and I declare under penalty of perjury that the foregoing Firm/Organization Information is true and correct.

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Name of Firm

---

Name and Title

---

Authorized Signature

---

Date



**EMPLOYEE ACKNOWLEDGMENT AND CONFIDENTIALITY AGREEMENT**

**GENERAL INFORMATION**

Your employer, \_\_\_\_\_, has entered into a contract with the County of Los Angeles to provide various services to the County. Therefore, your signature is required on this employee acknowledgment and confidentiality agreement.

**EMPLOYEE ACKNOWLEDGMENT**

I understand that \_\_\_\_\_, is my sole employer for purposes of this employment.

I rely exclusively upon \_\_\_\_\_, for payment of salary and any and all other benefits payable to me or on my behalf during the period of this employment.

I understand and agree that I am not an employee of Los Angeles County for any purposes and that I do not have and will not acquire any rights or benefits of any kind from the County of Los Angeles during the period of this employment.

I understand and agree that I do not have and will not acquire any rights or benefits pursuant to any agreement between my employer, \_\_\_\_\_ and the County of Los Angeles.

**CONFIDENTIALITY AGREEMENT**

As an employee of \_\_\_\_\_, you may be involved with work pertaining to County services and if so, you may have access to confidential data pertaining to persons and/or other entities who receive services from the County of Los Angeles. The County of Los Angeles has a legal obligation to protect all confidential data, especially data concerning welfare recipient records. If you are to be involved in County work, the County must ensure that you, too, will protect the confidentiality of all data. Consequently, you must sign this confidentiality agreement as a condition of your work to be provided to the County. Please read the agreement and take due time to consider it prior to signing.

I hereby agree that I will not divulge to any unauthorized person data obtained while performing work pursuant to the contract between \_\_\_\_\_ and the County of Los Angeles.

I agree to forward all requests for the release of information received by me to my immediate supervisor.

I agree to report any and all violations of the above by any other person and/or by myself to my immediate supervisor and I agree to ensure that said supervisor reports such violation to the County of Los Angeles Department of Children and Family Services.

I acknowledge that violation of this agreement and acknowledgment may subject me to civil and/or criminal action and that the County of Los Angeles will seek all possible legal redress.

Employee's Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Employee's Printed Name: \_\_\_\_\_

Employee's Position/Title: \_\_\_\_\_

# **AUDITOR – CONTROLLER CONTRACT ACCOUNTING AND ADMINISTRATION HANDBOOK**

*The following handbook is designed for inclusion in most contracts for services entered into by County departments. The purpose of the handbook is to establish accounting, internal control, financial reporting, and contract administration standards for organizations (contractors) who contract with the County.*

**AUDITOR-CONTROLLER  
CONTRACT ACCOUNTING AND ADMINISTRATION HANDBOOK**

The purpose of this Handbook is to establish required accounting, financial reporting, and internal control standards for entities (contractor) which contract with the Los Angeles County.

The accounting, financial reporting and internal control standards described in this Handbook are fundamental. These standards are not intended to be all inclusive or replace acceptable existing procedures or preclude the use of more sophisticated methods. Instead, this Handbook represents the minimum required procedures and controls that must be incorporated into a CONTRACTOR's accounting and financial reporting systems. The internal control standards described are those that apply to organizations with adequate staffing. Organizations with a smaller staff must attempt to comply with the intent of the standards and implement internal control systems appropriate to the size of their staff/organization. The CONTRACTOR's subcontractors must also follow these standards unless otherwise stated in the Agreement.

**A. ACCOUNTING AND FINANCIAL REPORTING**

**1.0 Basis of Accounting**

Contractors may elect to use either the cash basis or accrual basis method of accounting for recording financial transactions. Monthly invoices must be prepared on the same basis that is used for recording financial transactions.

- 1.1 The County recommends the use of the accrual basis for recording financial transactions.

Accrual Basis

Under the accrual basis, revenues are recorded in the accounting period in which they are earned (rather than when cash is received). Expenditures are recorded in the accounting period in which they are incurred (rather than when cash is disbursed).

Accruals

Accruals shall be recorded observing the following:

- ◆ Only accruals where cash will be disbursed within six months of the accrual date should be recorded.
- ◆ Recorded accruals must be reversed in the subsequent accounting period.

**1.2 If an agent elects to use the cash basis for recording financial transactions during the year:**

- ◆ Necessary adjustments must be made to record the accruals at the beginning and the end of the contract.
- ◆ All computations, supporting records, and explanatory notes used in converting from cash basis to the accrual basis must be retained.

- 1.3 Prepaid Expenses

Prepaid expenses (e.g., insurance, service agreements, lease agreements, etc.) should only be expensed during a given Agreement year to the extent goods and services are received during that Agreement year.

## **2.0 Accounting System**

Each agent shall maintain a double entry accounting system (utilizing debits and credits) with a General Journal, a Cash Receipts Journal, a General Ledger, and a Cash Disbursements Journal. The County recommends that a Payroll Register also be maintained. Postings to the General Ledger and Journals should be made on a monthly basis.

### **2.1 General Journal**

A General Journal shall be maintained for recording adjusting entries, reversing entries, closing entries, and other financial transactions not normally recorded in the Cash Receipts Journal or Cash Disbursements Journal. Entries in the General Journal must be adequately documented, and entered in chronological order with sufficient explanatory notations.

Example:		DR
CR		
Rent Expense	100	
Rent Payable		100

To record accrued rent to March 31, 20XX

## 2.2 Cash Receipts Journal

A Cash Receipts Journal shall be maintained for recording all cash receipts (e.g., County warrants, contributions, interest income, etc.). The Cash Receipts Journal shall contain (minimum requirements) the following column headings:

- date
- receipt number
- cash debit columns
- income credit columns for the following accounts:
  - County payments (one per funding source)
  - Contributions
  - Other Income (Grants, sales of supplies/services, rental income, miscellaneous revenue, fees, etc.)
- Description (Entries in the description column must specify the source of cash receipts.)

## 2.3 Cash Disbursements Journal

A Cash Disbursements Journal shall be maintained for recording all cash disbursements (e.g., rent, utilities, maintenance, etc.)

The Cash Disbursements Journal shall contain (minimum requirements) the following column headings:

- □ date
- □ check number
- □ cash (credit) column
- □ expense account name
- □ description

Note (1) Separate expense columns are recommended for salary expense and other recurring expense classifications for each program.

Note (2) Entries in the description column must specify the nature of the expense and the corresponding expense classification if not included in the column heading.

Note (3) Checks should not be written to employees (other than payroll, mileage, travel, and petty cash custodian checks.)

A Check Register may be substituted for the Cash Disbursements Journal, but this is not recommended. If used, the Check Register must contain the same expense classifications and description information required when a Cash Disbursements Journal is used.

Disbursements without supporting documentation will be disallowed on audit. Cancelled checks and credit card statements (VISA, AMEX, department store, etc.) will not constitute acceptable support. (See Section A.3.2 and B.2.4) for additional guidance.

## 2.4 General Ledger

A General Ledger shall be maintained with accounts for all assets, liabilities, fund balances, expenditures, and revenues. Separate accounts must be maintained for each County program's expenses and revenues.

## 2.5 Chart of Accounts

A Chart of Accounts shall be maintained:

- ☐ The County recommends that agents use the expense account titles on the monthly invoice submitted to the County.
- ☐ If the contractor uses account titles which differ from the account titles on the monthly invoice, each account title must clearly identify the nature of the transaction(s) posted to the account.
- ☐ Contractor must consistently post transactions that are of a similar nature to the same account. For example, all expenses for travel shall be posted to the account titled "travel" or "travel expense" and not intermixed with other expense accounts.

## 2.6 Payroll Register

The County recommends that a Payroll Register be maintained for recording all payroll transactions. The Register should contain the following:

- ☐ Name
- ☐ Position
- ☐ Social Security Number
- ☐ Salary (hourly wage)
- ☐ Payment Record including:
  - ☐ accrual period
  - ☐ gross pay
  - ☐ itemized payroll deductions
  - ☐ net pay amount
  - ☐ check number

If a Payroll Register is not used, the information in (2.6) must be recorded in the cash disbursements journal.

CONTRACTOR will ensure compliance with all applicable federal and State requirements for withholding payroll taxes (FIT, FICA, FUTA, SIT, SIU, etc.), reporting, filing (941, DE-7, W-2, W-4 and 1099s), and all applicable tax deposits.

Contractor will ensure compliance with Internal Revenue Service guidelines in properly classifying employees and independent contractors.

## 2.7 Contractor Invoices

Each agent shall present an invoice to the County each calendar month to report the financial activity of the month. In addition, if advanced funding is involved, an invoice shall be presented at the beginning of the

contract period. Invoices shall be prepared in the manner prescribed by the County's contracting department.

### **3.0 Records**

Adequate care shall be exercised to safeguard the accounting records and supporting documentation. Any destruction or theft of the CONTRACTOR's accounting records or supporting documentation shall be immediately reported to the County.

#### **3.1 Retention**

All accounting records (e.g., journals, ledgers, etc.), financial records and supporting documentation (e.g., invoices, receipts, checks, etc.) must be retained for a minimum of five years after the termination of the CONTRACTOR's agreement.

### 3.2 Supporting Documentation

All revenues and expenditures shall be supported by original vouchers, invoices, receipts, or other documentation and shall be maintained in the manner described herein.

Invoices, receipts and canceled checks will be required to support an outlay of funds. Unsupported disbursements will be disallowed on audit. CONTRACTOR will be required to repay COUNTY for all disallowed costs. **Photocopied invoices or receipts, any internally generated documents (i.e., vouchers, request for check forms, requisitions, canceled checks, etc.), and account statements do not constitute supporting documentation for purchases.**

Supporting documentation is required for various types of expenditures as follows:

**Payroll** – time and attendance records signed by the employee and approved in writing by the supervisor, time distribution records by program accounting for total work time on a daily basis for all employees, records showing actual expenditures for Social Security and unemployment insurance, State and federal quarterly tax returns, federal W-2 forms, and federal W-4 forms.

**Consultant Services** – contracts, time and attendance records, billing rates, travel vouchers detailing purpose, time and location of travel, purchase orders and invoices for supplies and invoices or other supporting documentation detailing the nature of services provided.

**Travel** – travel policies of the CONTRACTOR (written); travel expense vouchers showing location, date and time of travel, purpose of trip, and rates claimed; vehicle mileage logs showing dates, destination and headquarters, purpose of trip, and mileage. Travel related to conferences should include conference literature detailing purpose of the conference. Reimbursement rates for mileage shall not exceed applicable federal guidelines.

Reimbursement for actual receipts or per diem rates for meal expenses shall not exceed the maximum County's reimbursement rate for employees.

Receipts shall be required for lodging for approved out-of-town travel dates. Maximum reimbursable lodging amount is the maximum County's reimbursement rate for employees for a single occupancy hotel accommodation.

**Operating Expenses** (e.g., utilities, office supplies, equipment rentals, etc.) – bona fide contracts or lease agreements, if any, and invoices and receipts detailing the cost and items purchased will constitute the primary supporting documentation. For internal control purposes, the CONTRACTOR may maintain vouchers, purchase orders, requisitions, stock received reports, bills of lading, etc.



**Outside Meals** - receipts and/or invoices for all meals, a record of the nature and purpose of each meal, and identification of the participants.

### 3.3 Payments to Affiliated Organizations or Persons

CONTRACTOR shall not make payments to affiliated organizations or persons for program expenses (e.g., salaries, services, rent, etc.) that exceed the lower of actual cost or the reasonable cost for such expenses. A reasonable cost shall be the price that would be paid by one party to another when the parties are dealing at arm's length (fair market price).

Organizations or persons (related parties) related to the CONTRACTOR or its members by blood, marriage, or through legal organization (corporation, partnership, association, etc.) will be considered affiliated for purposes of this Agreement. County shall be solely responsible for the determination of affiliation unless otherwise allowed and approved by the State or federal agencies.

Payments to affiliated organizations or persons will be disallowed on audit to the extent the payments exceed the lower of actual costs or the reasonable costs for such items.

### 3.4 Filing

All relevant supporting documentation for reported program expenditures and revenues shall be filed in a systematic and consistent manner. It is recommended that supporting documents be filed as follows:

- checks – numerically
- invoices – vendor name and date
- vouchers – numerically
- receipts – chronologically
- timecards – pay period and alphabetically

### 3.5 Referencing

Accounting transactions posted to the CONTRACTOR's books shall be appropriately cross-referenced to supporting documentation. It is recommended that expenditure transactions on the CONTRACTOR's books be cross-referenced to the supporting documentation as follows:

- □ invoices – vendor name and date
- □ checks – number
- □ vouchers – number
- □ revenue – receipt number

Supporting documentation for non-payroll expenditures (i.e., operating expenditures) should be cross-referenced to the corresponding check issued for payment. If multiple invoices are paid with one check, all related invoices should be bound together and cross-referenced to the check issued for payment.

#### **4.0 Donations and Other Sources of Revenue**

Restricted donations and other sources of revenue earmarked specifically for the Contract must be utilized on allowable contract expenditures.

#### **5.0 Audits**

The agent will make available for inspection and audit to County representatives, upon request, during working hours, during the duration of the contract and for a period of five years thereafter, all of its books and records relating to the operation by it of each project or business activity which is funded in whole or part with governmental monies, whether or not such monies are received through the County. All such books and records shall be maintained at a location within Los Angeles County.

#### **6.0 Single Audit Requirements**

OMB Circular 133, "Audits of State, Local Governments and Non Profit Organizations" requires that certain organizations receiving federal awards, including pass-through awards, have annual audits. Details are contained in the respective Circular.

A copy of any Single Audit reports must be filed with the County within the timeframes prescribed by the applicable Circular.

#### **7.0 Subcontracts**

No CONTRACTOR shall subcontract services without the prior written consent of the County.

CONTRACTOR shall provide County with copies of all executed subcontracts and shall be responsible for the performance of their subcontractors.

#### **B. INTERNAL CONTROLS**

Internal controls safeguard the CONTRACTOR's assets from misappropriations, misstatements or misuse. Each CONTRACTOR shall prepare necessary written procedures establishing internal controls for its personnel. The CONTRACTOR shall instruct all of its personnel in these procedures and continuously monitor operations to ensure compliance with them.

#### **1.0 Cash Receipts**

##### **1.1 Separate Fund or Cost Center**

All contract revenues shall be maintained in a bank account. If revenues from other sources are maintained in the same bank account, revenues for each source must be clearly identifiable on the accounting records through the use of cost centers or separate accounts.

##### **1.2 Deposits**

All checks shall be restrictively endorsed upon receipt.

Cash received shall be recorded on pre-numbered receipts. Checks shall be recorded on a check remittance log at the time of receipt.

Cash receipts (i.e., cash and checks) totaling \$500 or more shall be deposited within one day of receipt. Collections of less than \$500 may be held and secured and deposited weekly or when the total reaches \$500, whichever occurs first.

Duplicate deposit slips shall be retained and filed chronologically, and shall contain sufficient reference information for comparison to the Cash Receipts Journal (and individual receipts, if applicable).

### 1.3 Separation of Duties

An employee who does not handle cash shall record all cash receipts.

### 1.4 Bank Reconciliations

Bank statements should be received and reconciled by someone with no cash handling, check writing, or bookkeeping functions.

Monthly bank reconciliations should be prepared within 30 days of the bank statement date and reviewed by management for appropriateness and accuracy. The bank reconciliations should be signed by both the preparer and the reviewer. Reconciling items should be resolved timely.

## **2.0 Disbursements**

### 2.1 General

All disbursements for expenditures, other than petty cash, shall be made by check.

Blank check stock shall be secured and accounted for to preclude unauthorized use.

Checks shall not be payable to "cash" or signed in advance. Checks written to employees for reimbursement of out-of-pocket costs must be supported by receipts and invoices.

A second signature shall be required on all checks, unless otherwise specified in contract.

If the bookkeeper signs checks, a second signature shall be required on the checks, regardless of limits specified in contract.

Voided checks shall be marked void with the signature block cut out. The voided checks must be filed with the cancelled checks.

Unclaimed or undelivered checks shall be cancelled periodically.

All supporting documentation shall be referenced to check numbers and marked "paid" or otherwise canceled to prevent reuse or duplicate payments.

Disbursements without adequate supporting documentation will be disallowed on audit.

### 2.2 Approvals and Separation of Duties

Employees responsible for approving cash disbursements and/or signing of checks shall examine all supporting documentation at the time the checks are approved and signed.

All disbursements, excluding petty cash purchases, shall be approved by persons independent of check preparation and bookkeeping activities.

## 2.3 Petty Cash

A petty cash fund up to \$500 may be maintained for payment of small incidental expenses incurred by the CONTRACTOR (e.g., postage due, small purchases of office supply items, etc.). The CONTRACTOR must obtain written approval from the County to establish a petty cash fund greater than \$500.

Petty cash disbursements must be supported by invoices, store receipts or other external authenticating documents indicating the item purchased and the employee making the purchase. In the event that outside (external) supporting documentation is not obtainable for minor disbursements (under \$10), such as parking meters, etc., then documentation shall be considered as proper supporting documentation on a basis of reasonableness. Petty cash disbursements should not be used as a substitute for normal purchasing and disbursement practices i.e., payment by check).

The petty cash fund shall be maintained on an imprest basis. A check should be drawn to set up the fund and to make periodic reimbursements. Receipts, vouchers, etc., supporting each fund replenishment must be bound together, filed chronologically and cross referenced to the reimbursement check.

## 2.4 Credit Cards

The use of credit cards, both CONTRACTOR issued credit cards and an employee's personal credit cards used on behalf of the CONTRACTOR, should be limited to purchases where normal purchasing and disbursement practices are not suitable.

Credit cards issued in the CONTRACTOR's name must be adequately protected and usage monitored to ensure that only authorized and necessary items are purchased.

Credit card purchases should be pre-approved by CONTRACTOR management to ensure that they are reasonable and necessary.

All credit card disbursements must be supported by original invoices, store receipts or other external authenticating documents indicating the item purchased and the employee making the purchase. Credit card statements are not sufficient support for credit card purchases.

## 3.0 Timekeeping

### 3.1 Timecards

Timecards or time reports must be prepared for each pay period. Timecards or time reports must indicate total hours worked each day by program and total hours charged to each of the CONTRACTOR's programs. Time estimates do not qualify as support for payroll expenditures and will be disallowed on audit.

All timecards and time reports must be signed in ink by the employee and the employee's supervisor to certify the accuracy of the reported time.

### 3.2 Personnel and Payroll Records

Adequate security must be maintained over personnel and payroll records with access restricted to authorized individuals.

Personnel and payroll records should include (but not be limited to) the following:

- Employee's authorized salary rate
- Employee information sheet
- Resume and/or application
- Proof of qualifications for the position, if required (e.g., notarized copy or original diploma, license, etc.)
- Performance evaluations
- Criminal record clearance
- Citizenship Status
- Benefit balances (e.g., sick time, vacation, etc.)

#### Benefit Balances

Employee benefit balances (e.g., sick time, vacation, personal time, etc.) should be maintained on at least a monthly basis. Benefit balances should be increased when benefit hours are earned and decreased as hours are used.

#### Limitations on Positions and Salaries

The CONTRACTOR shall pay no salaries higher than those authorized in the contract, or the attachments thereto, except as proscribed by state or federal law.

If an employee serves in the same or dual capacities under more than one Agreement or program, the employee may not charge more than 100% of their time to the contracts or programs taken as a whole.

Salaried employees who work less than 40 hours per week shall be paid a salary that corresponds with the employee's work schedule.

The salary expense of salaried employees working on more than one Agreement or program shall be allocated to each program based on the ratio of the number of hours worked on each program during the pay period to the total number hours worked during the pay period.

The CONTRACTOR will make no retroactive salary adjustment for any employee without written approval from the County.

#### Separation of Duties

Payroll checks should be distributed by persons not involved in timekeeping, preparing of payroll, or reconciling bank accounts.

All employee hires and terminations, or pay rate changes, shall be approved by authorized persons independent of payroll functions.

All employee hires and terminations, or pay rate changes shall be approved in writing by authorized persons independent of payroll functions.

#### 4.0 Fixed Assets

A fixed asset is defined as an article of nonexpendable tangible personal property having a useful life of more than two years. The County recommends all fixed assets with an acquisition cost of \$1,000 or more per unit be capitalized.

Acquisition cost means the net invoice unit price of an item, including the cost of any modifications, attachments, accessories, or auxiliary apparatus necessary to make it usable for the purpose for which it was acquired.

#### 4.1 Acquisition

Fixed asset purchases shall be approved by the Agency's Board of Directors or their authorized representative.

#### 4.2 Identification and Inventory

All fixed assets purchased with Contract funds are to be used solely for the benefit of the Contract and should be appropriately tagged.

Each CONTRACTOR shall maintain a current listing of fixed assets, including the item description, serial number, date of purchase, acquisition cost and sources of funding.

An inventory of all fixed assets should be conducted at least once each year to ensure that all fixed assets are accounted for and maintained in proper working order.

#### 4.3 Security

Physical security should be adequately maintained over fixed assets to prevent misuse and theft of County property.

#### 4.4 Property Management

The CONTRACTOR shall assume responsibility and accountability for the maintenance of all non-expandable property purchased, leased, or rented with Contract funds.

The CONTRACTOR shall report promptly, in writing, to the County all cases of theft, loss, damage, or destruction of fixed assets. The report shall contain at a minimum, item identification, recorded value, facts relating to loss, and a copy of the law enforcement report.

CONTRACTOR shall dispose of or return to the County all fixed assets, in accordance with their Contract.

#### 5.0 Bonding – All officers, employees, and agents who handle cash or have access to the agent's funds shall be bonded.

## C. COST PRINCIPLES

### 1.0 Policy

It is the intent of the COUNTY to provide funds for the purpose of CONTRACTOR providing services required by the Agreement. CONTRACTOR shall use these funds on actual expenses in an economical and efficient manner and ensure they are reasonable, proper and necessary costs of providing services and are allowable in accordance with the applicable OMB Circular.

#### 1.1. Limitations on Expenditures of Program Funds

CONTRACTOR shall comply with the Agreement and the applicable OMB Circular. The Circular defines direct and indirect costs, discusses allowable cost allocation procedures and the development of Indirect Cost Rates, and specifically addresses the allowability of a variety of different costs.

If a CONTRACTOR is unsure of the allowability of any particular type of cost or individual cost, the CONTRACTOR should request advance written approval from the County prior to incurring the cost.

#### 1.2 Expenses Incurred Outside the Agreement Period

Expenses charged against program funds may not be incurred prior to the effective date of the Agreement or subsequent to the Agreement termination date.

#### 1.3 Budget Limitation

Expenses may not exceed the maximum limits shown on the contract budget.

#### 1.4 Unspent Funds

The County will determine the disposition of unspent program funds upon termination of the contract.

#### 1.5 Necessary, Proper and Reasonable

Only those expenditures that are necessary, proper and reasonable to carry out the purposes and activities of the Program are allowable.

### 2.0 Allocation of Cost Pools

For CONTRACTORs that provide services in addition to the services required under contract, the CONTRACTOR shall allocate expenditures that benefit programs or funding sources on an equitable basis.

In accordance with the applicable OMB Circular, agencies shall define their allocable costs as either direct or indirect costs (as defined below) and allocate each cost using the basis most appropriate and feasible.

The CONTRACTOR shall maintain documentation related to the allocation of expenses (e.g., timecards, time summaries, square footage measurements, number of employees, etc.).

Under no circumstances shall allocated costs be charged to an extent greater than 100% of actual costs or the same cost be charged both directly and indirectly.

2.1 Direct Costs

Direct costs are those costs that can be identified specifically with a particular final cost objective (i.e., a particular program, service, or other direct activity of an organization). Examples of direct costs include salaries and benefits of employees working on the program, supplies and other items purchased specifically for the program, costs related to space used by employees working on the program, etc.

For all employees, other than general and administrative, the hours spent on each program (activity) should be recorded on employees' timecards and the payroll expense should be treated as direct charges and distributed on the basis of recorded hours spent on each program.

Joint costs (i.e., costs that benefit more than one program or activity) which can be distributed in reasonable proportion to the benefits received may also be direct costs.

Examples of bases for allocating joint costs as direct costs:

- |   |                 |                              |
|---|-----------------|------------------------------|
| - |                 | Number of direct hours spent |
|   | on each program |                              |
| - |                 | Number of employees in each  |
|   | program         |                              |
| - |                 | Square footage occupied by   |
|   | each program    |                              |
| - |                 | Other equitable methods of   |
|   | allocation      |                              |



## 2.2 Indirect Costs

Indirect costs are those costs that have been incurred for common or joint objectives and cannot be readily identified with a particular final cost objective. Examples of indirect costs include salaries, employee benefits, supplies, and other costs related to general administration of the organization, depreciation and use allowances, and the salaries and expenses of executive officers, personnel administration, and accounting.

Examples of bases for allocating indirect costs:

- Total direct salaries and wages
- Total direct costs (excluding capital expenditures and other distorting items such as subcontractor payments)

## 2.3 Acceptable Indirect Cost Allocation Methods

OMB Circulars describe the following allowable methods for allocating indirect costs:

- Simplified allocation method
- Direct allocation method
- Multiple allocation base method
- Negotiated indirect cost rate

### Simplified Allocation Method

This method can be used when an organization's major functions benefit from its indirect costs to approximately the same degree. Using this method, all allocable costs are considered indirect costs and an indirect cost rate is determined by dividing total allowable indirect costs by an equitable distribution base.

#### Example

Agency-wide indirect costs	\$250,000
Less: Capital expenditures	<u>10,000</u>
Allocable indirect costs	240,000
Total agency-wide indirect salaries	\$1,000,000
Indirect cost rate (\$240,000/\$1,000,000)	24%
Program direct salaries	\$100,000
Program indirect costs (24% x \$100,000)	<u>\$24,000</u>

### Direct Allocation Method

This method can also be used when an organization's major functions benefit from its indirect costs to approximately the same degree. Using this method, all costs except general administration and general expenses are treated as direct costs. Joint costs for depreciation, rental, facilities maintenance, telephone, and

other similar expenses are prorated individually to each direct activity on a basis appropriate for that type of cost.

The remaining costs, which consist exclusively of general administration and general expenses are then allocated using the simplified allocation method previously discussed.

#### Multiple Base Allocation Method

This method can be used when an organization's major functions benefit from its indirect costs in varying degrees. Using this method, indirect costs are grouped to permit allocation of each grouping on the basis of the benefits provided to the major functions. Each grouping is then allocated individually using the basis most appropriate for the grouping being allocated.

### 2.4 Cost Allocation Plan

If the CONTRACTOR has a negotiated indirect cost rate approved by a federal agency, it shall submit a copy of the approval letter when requested by County.

If the CONTRACTOR does not have a negotiated indirect cost rate, CONTRACTOR shall submit an annual Agency-wide Cost Allocation Plan when requested by County. The Cost Allocation Plan shall be prepared in accordance with County instructions and the applicable OMB Circular and include the following information:

1. CONTRACTOR general accounting policies:
  - Basis of accounting (cash or accrual)
  - Fiscal year
  - Method for allocating indirect costs (simplified, direct, multiple, negotiated rate)
  - indirect cost rate allocation base
2. Identify the CONTRACTOR's direct and indirect costs (by category) and describe the cost allocation methodology for each category.
3. Signature of CONTRACTOR management certifying the accuracy of the plan.

#### Negotiated Indirect Cost Rates

Agencies have the option of negotiating an indirect cost rate or rates for use on all their Federal programs. The CONTRACTOR must submit a cost allocation plan to the federal agency providing the most funds to the organization. The approved indirect cost rate is then applied to the total approved direct cost base.

If CONTRACTOR has a federally approved indirect cost rate, CONTRACTOR shall submit a copy of the approval letter to COUNTY upon request.

### D. UNALLOWABLE COSTS

OMB Circulars address the allowability of a variety of different costs. For all costs, there are certain restrictions and limitations; however, the following costs are not allowable under any circumstances:

- Bad debts
- Contingency provisions
- Contributions and donations
- Fines and penalties
- Fundraising activities
- Interest expense (unless expressly allowed by Federal guidelines)
- Losses on other awards

#### E. OVERPAYMENTS

If upon audit, or at any time during the Agreement year, it is determined that invoices submitted to the County and used as a basis for payments to the CONTRACTOR were inaccurate, County shall determine the total overpayment and require the CONTRACTOR to repay County. The County may withhold payments from CONTRACTOR's future payments for any amounts not returned to the COUNTY or credited to the Contract unless otherwise prohibited by State or federal regulations.

#### F. MISCELLANEOUS REQUIREMENTS

##### 1.0 Insurance

CONTRACTOR is responsible for securing and maintaining insurance coverage as required by the Agreement. CONTRACTOR must notify County when insurance is revoked, reduced to a level or coverage less than required, or otherwise made ineffective.

Insurance shall include an endorsement naming the COUNTY as an additional insured.

##### 2.0 Activity

No funds, materials, property, or services contributed to the COUNTY or the CONTRACTOR under this Agreement shall be used in the performance of any political activity, the election of any candidate, or the defeat of any candidate for public office.

Department of the Treasury  
Internal Revenue Service

Notice 1015

Have You Told Your Employees About the Earned Income Credit (EIC)?

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**What Is the EIC?**

The EIC is a refundable tax credit for certain workers.

**A change to note.** Workers **cannot** claim the EIC if their 2000 investment income (such as interest and dividends) is over \$2,400.

**Which Employees Must I Notify About the EIC?**

You must notify each employee who worked for you at any time during the year and from whom you did not withhold income tax. However, you do not have to notify any employee who claimed exemption from withholding on **Form W-4**, Employee's Withholding Allowance Certificate.

**Note:** *You are encouraged to notify each employee whose wages for 2000 are less than \$31,152 that he or she may be eligible for the EIC.*

**How and When Must I Notify My Employees?**

You must give the employee one of the following:

- The IRS **Form W-2**, Wage and Tax Statement, which has the required information about the EIC on the back of **Copy B**.
- A substitute Form W-2 with the same EIC information on the back of the employee's copy that is on Copy B of the IRS Form W-2.
- **Notice 797**, Possible Federal Tax Refund Due to the Earned Income Credit (EIC).
- Your written statement with the same wording as Notice 797.

If you are required to give Form W-2 and do so on time, no further notice is necessary if the Form W-2 has the required information about the EIC on the back of the employee's copy. If a substitute Form W-2 is given on time but does not have the required information, you must notify the employee within 1 week of the date the substitute Form W-2 is given. If Form W-2 is required but is not given on time, you must give the employee Notice 797 or your written statement by the date Form W-2 is required to be given. If Form W-2 is not required, you must notify the employee by February 7, 2001.

You must hand the notice directly to the employee or send it by First-Class Mail to the employee's last known address. You will not meet the notification requirements by posting Notice 797 on an employee bulletin board or sending it through office mail. However, you may want to post the notice to help inform all employees of the EIC. You can get copies of the notice by calling 1-800-829-3676. You can also get the notice from the IRS Web Site at [www.irs.gov](http://www.irs.gov).

EXHIBIT G

How Will My Employees Know If They Can Claim the EIC?

The 2000 instructions for Forms 1040, 1040A, and 1040EZ, and **Pub. 596**, Earned Income Credit, explain who can claim the EIC. Generally, any employee who meets the following requirements may be able to claim the EIC for 2000.

**Note:** *An employee **cannot** claim the EIC if he or she files **Form 2555** or **Form 2555-EZ** (relating to foreign earned income). Also, an employee who is a nonresident alien for any part of 2000 **cannot** claim the EIC unless he or she is married to a U.S. citizen or resident and elects to be taxed as a resident alien for all of 2000.*

- The employee's 2000 earned income and modified adjusted gross income are both under \$27,413 (under \$31,152 if the employee has more than one qualifying child; under \$10,380 if the employee does not have a qualifying child). **Earned income** for this purpose does not include amounts paid to inmates in penal institutions for their work.
- The employee's filing status is any status **except** married filing a separate return.
- The employee (and the employee's spouse if filing a joint return) is not a qualifying child of another person.
- For an employee without a qualifying child, the employee is at least age 25 but under 65 at the end of 2000. Also, no one may be entitled to claim the employee as a dependent and the employee's home must be in the United States for over half of 2000. If the employee is married filing a joint return, other rules apply.

#### **How Do My Employees Claim the EIC?**

Eligible employees claim the EIC on their 2000 tax return. Even employees who have no tax withheld from their pay or owe no tax can claim the EIC and get a refund, but they must file a tax return to do so. For example, if an employee has no tax withheld in 2000 and owes no tax but is eligible for a credit of \$797, he or she must file a 2000 tax return to get the \$797 refund.

#### **How Do My Employees Get Advance EIC Payments?**

Eligible employees who expect to have a qualifying child for 2001 can get part of the credit with their pay during the year by giving you a completed **Form W-5**, Earned Income Credit Advance Payment Certificate. You **must** include advance EIC payments with wages paid to these employees, but the payments are not wages and are not subject to payroll taxes. Generally, the payments are made from withheld income, social security, and Medicare taxes. For details, see **Pub. 15**, Employer's Tax Guide.

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## **Notice 1015**

(Rev. 10-2000)

## **EXHIBIT H**

### **COMMUNITY COLLEGE LOCATIONS**

# Los Angeles County Community College Partnerships



	ILP-Statewide	ILP- Los Angeles	MAPP/F2F/KEPS	ESTEP	Campus Per Mentoring	FKCE
Antelope Valley	✓	✓	✓	✓		✓
<b><u>Cerritos</u></b>		✓	✓			✓
Citrus	✓	✓	✓			✓
College of the Canyons		✓	✓			✓
Compton Community	✓	✓	✓	✓		✓
East Los Angeles	✓	✓	✓	✓		✓
Long Beach City		✓	✓	✓		✓
El Camino		✓	✓	✓		✓
Los Angeles City	✓	✓	✓			✓
Los Angeles Harbor		✓	✓			✓
Los Angeles Mission	✓	✓	✓	✓		✓
Los Angeles Pierce		✓	✓			✓
Los Angeles Southwest	✓	✓	✓	✓		✓
Los Angeles Trade-Tech		✓	✓	✓		✓
Los Angeles Valley		✓				
Mt. San Antonio	✓	✓	✓	✓	✓	✓
Pasadena City	✓	✓	✓	✓		✓
Rio Hondo	✓	✓	✓	✓		✓
West Los Angeles	✓	✓	✓	✓		✓
<b>Totals:</b>	<b>11</b>	<b>19</b>	<b>18</b>	<b>12</b>	<b>1</b>	<b>18</b>

ILP = Independent Living Skills Program  
 MAPP/FTF = Models Approaches To Partnerships in Parenting/Family To Family  
 KEPS = Kinship Education Preparation Support  
 ESTEP = Early Start To Emancipation Preparation  
 FKCE = Foster and Kinship Care Education – Funded through the Community College Chancellor’s Office

**EXHIBIT I**

**SAMPLE COMMUNITY COLLEGE SUBCONTRACT**



**AGREEMENT FOR THE  
EARLY START TO EMANCIPATION PROGRAM (ESTEP)  
LOS ANGELES COUNTY**

This AGREEMENT is entered into as of the first day of July, 2002, by and between the **THE COMMUNITY COLLEGE FOUNDATION** (FOUNDATION) and the «**District**» (CONTRACTOR) for «**College**» for the period ending June 30, 2003.

This Agreement is a subcontract under the terms of a prime contract with the County of Los Angeles. All representations and warranties shall insure the benefits of the County of Los Angeles.

This Agreement may be canceled by either party upon providing written notice to the other party thirty (30) days before the termination date.

Be it resolved, it is mutually agreed by and between said parties hereto as follows:

**ARTICLE I - RESPONSIBILITIES OF THE DISTRICT**

1. The CONTRACTOR shall implement the Early Start to Emancipation Program (ESTEP) in accordance with plans outlined in the 2002-2003 Budget contained in this document by the FOUNDATION to the CONTRACTOR. (See Attachment A).
2. Any changes or modifications to said proposal require advance written approval by the FOUNDATION Program Manager.
3. The FOUNDATION reserves the right to withhold funding from any college whose performance does not comply with the terms of this Agreement.
4. Fiscal Provisions
  - a) The total amount payable under this Agreement shall not exceed the sum of \$16,448.00.
  - b) Payment to the CONTRACTOR will be based upon the College Program Expenditure Reports submitted quarterly. The College Program Expenditure Report will be in keeping with the submitted budget. No quarterly payment will exceed seventy-five percent (75%) of the CONTRACTOR'S total budget without written permission of the FOUNDATION Program Manager. The sum of all Final Allocation shall be paid upon receipt of the final fiscal report due July 31, 2003; receipt of the attendance sheets for all events; and satisfactory completion of the entire contract.
  - c) CONTRACTOR must include in the budget allocations for food. The CONTRACTOR is expected to allocate \$6.75 per youth for two light meals per each workshop. This food expense must be spent on food and not on gifts or any other training items.
  - d) The CONTRACTOR must submit an attendance sheet for each completed event and workshop, showing the below listed items, within one (1) week of the event. Both the Emancipation Preparation Advisor and the Program Director must sign the completed attendance sheet, verifying the number of total participants in attendance per event.

Each attendance sheet must include:

1. Youth's full name as it appears in Department of Children and Family Services' case files.
2. Youth's date of birth.

5. Fiscal Responsibilities

a) Records and Record Retention

CONTRACTOR shall maintain necessary program records documenting services and fiscal records showing expenditures made under this agreement and shall submit copies of such documents to the FOUNDATION with quarterly expenditure reports.

Records shall be maintained for at least five (5) years from the end of the fiscal year during which this Agreement is terminated or until all county, state, and federal audits are complete for the fiscal year during which this Agreement is terminated, whichever is later. The CONTRACTOR shall make these records available to county, state, and federal government or to the FOUNDATION upon request.

b) Fiscal and Participant Reports

The CONTRACTOR shall prepare and submit to the FOUNDATION a documented fiscal report due on or before July 31, 2003. These reports shall become the property of the FOUNDATION.

c) Budget Modifications

The CONTRACTOR may make changes in any individual line item in the budget, provided such changes in the aggregate as to any line item shall not exceed ten percent (10%) of that budget category. Additional budget changes are allowable only with prior written approval of the Program Manager. The FOUNDATION reserves the right to review service levels and billing procedures as these impact charges against this Agreement.

d) Audit Requirements

The CONTRACTOR agrees to obtain a financial program compliance and internal control structure audit of its organization in accordance with the Federal Office of Management and Budget (OMB) Circular A-128 or A-133, whichever is applicable. The CONTRACTOR agrees to send a copy of the completed audit report to the FOUNDATION.

e) Audit Exceptions

It being understood that the CONTRACTOR is responsible for administering the program as described herein, the CONTRACTOR agrees to accept responsibility for receiving, replying to, and/or complying with any audit exceptions by appropriate County, State, and Federal audit agencies, directly related to the provisions of this Agreement.

f) Compliance with Laws

CONTRACTOR agrees to comply with all applicable Federal, State, and local laws and all provisions required thereby to be included herein, and hereby incorporated by this reference.

6. The contracting parties agree to be subject to the examination and audit of the Auditor General for a period of five (5) years after final payment under the contract.

7. In the event of a dispute, CONTRACTOR agrees to file a "Notice of Dispute" with the Foundation within ten (10) days of discovery of the problem. Within ten (10) days, the FOUNDATION shall meet with the CONTRACTOR and Program Manager for purposes of resolving the dispute. The decision of the FOUNDATION shall be final.
8. The copyright to all materials produced as a result of this agreement shall belong to the FOUNDATION. CONTRACTOR assigns all rights, title, and interest, including the copyright, to any works created pursuant to this agreement on all publications of such work. FOUNDATION may license CONTRACTOR to reproduce and disseminate copies of such work.

## **ARTICLE II - RESPONSIBILITIES OF THE COLLEGE**

1. The College, in collaboration with the Emancipation Preparation Advisor (EPA), shall work to connect ESTEP for fourteen (14) and fifteen (15) year old youth with the Independent Living Program for youth sixteen (16) and older.
2. CONTRACTOR shall provide twelve (12) workshops during the calendar year. These workshops will run in a series of four meetings. A maximum of 25 youth shall be enrolled. Each series will run once in the fall, once in the winter, and again in the spring for a total of three (3) series. Each workshop shall provide specific training to youth volunteering to participate in the ESTEP program. Each workshop shall provide assistance and instruction to youth in the various identified areas of need. Topics to be discussed will relate to:
  - basic academic knowledge and school behavior
  - career and vocational development
  - daily living skills
  - survival skills
  - interpersonal and social development
3. CONTRACTOR will provide two (2) experienced trainers (with high-risk youth) for each workshop.
4. THE COMMUNITY COLLEGE FOUNDATION will provide two practicum experiences for youth for each of the three workshop series. CONTRACTOR will provide a trainer for one practicum for each of the three series .
5. CONTRACTOR shall develop and submit to the COUNTY'S Program Manager, a master event calendar for all community colleges within thirty (30) days of the execution of this Agreement.
6. The College Program Director shall monitor the progress of the program and complete all reports and requests for information in a timely fashion.
7. The college will provide input and may participate in the development of performance criteria for youth development.
8. The College shall maintain the confidentiality of all records, including but not limited to billings and Department of Children and Family Services records, in accordance with all applicable federal, state and local laws, regulations, ordinances and directives relating to confidentiality. CONTRACTOR shall inform all of its officers, employees, subcontractors, and agents providing services hereunder of the confidentiality provisions of this Agreement. As a condition of employment, all employees of CONTRACTOR and subcontractors must sign and adhere to the "Contractor Employee Acknowledgement and Confidentiality Agreement." (See Attachment B.)

## **ARTICLE III - INSURANCE RESPONSIBILITIES**

Without limiting CONTRACTOR'S indemnification of FOUNDATION during the term of this Agreement, CONTRACTOR shall provide and maintain at its own expense the following programs of insurance. Such programs and evidence of insurance shall be satisfactory to the FOUNDATION and shall be primary to and not contributing with any other insurance maintained by the FOUNDATION. Certificates or other evidence of coverage shall be delivered to

Delia Johnson, Vice President  
C/o Contracts  
The Community College Foundation  
14156 Magnolia Boulevard, Suite 101  
Sherman Oaks, CA 91423

prior to commencing services under this Agreement, and shall specifically identify this Agreement, and shall contain the express condition that FOUNDATION is to be given written notice by registered mail at least thirty (30) days in advance of any modification or termination of insurance.

Notwithstanding any other provision of this Agreement, failure by CONTRACTOR to procure and maintain the required insurance shall constitute a material breach of this Agreement and FOUNDATION may immediately terminate or suspend this Agreement as a result thereof.

Liability: Such insurance shall be endorsed naming FOUNDATION as an additional insured and shall include:

1. General liability insurance written on a commercial general liability form covering the hazards of premises/operations, contractual, independent contractors, products/completed operations, broad form property damage, and personal injury with a combined single limit of not less than five hundred thousand dollars (\$500,000) per occurrence.
    - a. If written with an annual aggregate limit, the policy limit should be three times the above required occurrence limit.
    - b. If written on a claims made form, the CONTRACTOR shall continue to name the FOUNDATION as an additional insured or provide an extended two year reporting period commencing upon termination or cancellation of this Agreement.
  2. Comprehensive auto liability endorsed for all owned, non-owned, and hired vehicles with a combined single limit of not less than three hundred thousand dollars (\$300,000) per occurrence.
- A. Workers' Compensation: Insurance in an amount and form to meet all applicable requirements of the Labor Code of the State of California, including Employer's Liability with one million dollars (\$1,000,000) limit, covering all persons who provide services for the CONTRACTOR.
- B. Professional Liability: Insurance covering liability arising from any error, omission, or negligent act of the CONTRACTOR, its officers, or employees with a limit of liability of not less than one million dollars (\$1,000,000) per claim.
- C. Health Insurance: A program of health insurance for CONTRACTOR'S full-time employees providing services under this Agreement.

#### ARTICLE IV - GENERAL PROVISIONS

1. This agreement supersedes and makes null and void any prior agreements between the parties which conflict with the terms of this Agreement. To the extent that either the FOUNDATION's Request for Bid, or the CONTRACTOR's bid conflicts with the terms of this Agreement, the terms of this Agreement shall control.

2. All written notices, reports and other written communications under this Agreement shall be addressed to:

Delia Johnson, Vice President  
The Community College Foundation  
14156 Magnolia Blvd., Suite 101  
Sherman Oaks, CA 91423

3. DELIA JOHNSON is designated as the Program Manager on behalf of the FOUNDATION. The Program Manager is responsible for overseeing the program as a whole, and any questions or problems relating to the program administration should be directed toward the Program Manager or her designee.
- A. During the performance of this contract, CONTRACTOR and its subcontractors shall not deny the contract's benefits to any person on the basis of religion, color, ethnic group identification, sex, age, physical or mental disability, nor shall they discriminate unlawfully against any employee or applicant for employment because of race, religion, color, national origin, ancestry, physical handicap, mental disability, medical condition, marital status, age or sex. CONTRACTOR shall insure that the evaluation and treatment of employees and applicants for employment are free of such discrimination.
- B. CONTRACTOR shall comply with the provisions of the Fair Employment and Housing Act (Government Code, Section 12900 et seq.), the regulations promulgated thereunder (California Administrative Code, Title 2, Section 7285.0 et seq.), the provisions of Article 9.5, Chapter 1, Part 1, Division 3, Title 2 of the Government Code (Government Code, Sections 11135-11139.5) and the regulations or standards adopted by the awarding State agency to implement such article.
- C. CONTRACTOR and its subcontractors shall give written notice of their obligations under this paragraph to labor organizations with which they have a collective bargaining or other agreement.
- D. CONTRACTOR shall include the nondiscrimination and compliance provisions of this paragraph in all subcontracts to perform work under this contract.

In witness whereof, the parties hereto have executed this Agreement the day and year first above written.

**THE COMMUNITY COLLEGE  
FOUNDATION**

**COVENANTOR**

x

\_\_\_\_\_  
David Springett, President  
(Authorized Signature)

\_\_\_\_\_  
CONTRACTOR  
(College or College District Name)

\_\_\_\_\_  
Authorized (Printed Name and Title)

\_\_\_\_\_  
(Signed Name)

\_\_\_\_\_  
(Printed Address)

\_\_\_\_\_  
(City/Zip)

\_\_\_\_\_  
(Date)



**EXHIBIT J**

**CERTIFICATION OF  
INDEPENDENT PRICE DETERMINATION**

**CERTIFICATION OF INDEPENDENT PRICE DETERMINATION**

CONTRACTOR certifies that the prices submitted in the Budget herein have been arrived at independently without consultation, communication, or agreement with any other applicant or competitor for the purpose of restricting competition.

---

Name

---

Title

---

Authorized Signature

---

Date



**EXHIBIT K**

**COUNTY OF LOS ANGELES  
CONTRACTOR EMPLOYEE JURY SERVICE PROGRAM**

## **“Contractor Employee Jury Service”**

### **Los Angeles County Code Sections 2.203.010 through 2.203.090**

#### **2.203.010 Findings.**

The board of supervisors makes the following findings. The county of Los Angeles allows its permanent, full-time employees unlimited jury service at their regular pay. Unfortunately, many businesses do not offer or are reducing or even eliminating compensation to employees who serve on juries. This creates a potential financial hardship for employees who do not receive their pay when called to jury service, and those employees often seek to be excused from having to serve. Although changes in the court rules make it more difficult to excuse a potential juror on grounds of financial hardship, potential jurors continue to be excused on this basis, especially from longer trials. This reduces the number of potential jurors and increases the burden on those employers, such as the county of Los Angeles, who pay their permanent, full-time employees while on juror duty. For these reasons, the county of Los Angeles has determined that it is appropriate to require that the businesses with which the county contracts possess reasonable jury service policies. (Ord. 2002-0015 § 1 (part), 2002).

#### **2.203.020 Definitions.**

The following definitions shall be applicable to this chapter:

- A. “Contractor” means a person, partnership, corporation or other entity which has a contract with the county or a subcontract with a county contractor and has received or will receive an aggregate sum of \$50,000 or more in any 12-month period under one or more such contracts or subcontracts.
- B. “Employee” means any California resident who is a full-time employee of a contractor under the laws of California.
- C. “Contract” means any agreement to provide goods to, or perform services for or on behalf of, the county.
- D. “Full time” means 40 hours or more worked per week, or a lesser number of hours if the lesser number is a recognized industry standard as determined by the chief administrative officer.
- E. “County” means the county of Los Angeles or any public entities for which the board of supervisors is the governing body. (Ord. 2002-0015 § 1 (part), 2002).

#### **2.203.030 Applicability.**

This chapter shall apply to contractors who enter into contracts that commence two or more months after the effective date of this chapter. This chapter shall also apply to contractors with existing contracts which are extended into option years that commence two or more months after the effective date of this chapter. (Ord. 2002-0015 § 1 (part), 2002)

#### **2.203.040 Contractor Jury Service Policy.**

A contractor shall have and adhere to a written policy that provides that its employees shall receive from the contractor, on an annual basis, no less than five days of regular pay for actual jury service. The policy may provide that employees deposit any fees received for such jury service with the contractor or that the contractor deduct from the employees’ regular pay the fees received for jury service. (Ord. 2002-0015 § 1 (part), 2002).

#### **2.203.050 Other Provisions.**

A. Administration. The chief administrative officer shall be responsible for the administration of this chapter. The chief administrative officer may, with the advice of county counsel, issue interpretations of the provisions of this chapter and shall issue written instructions on the implementation and ongoing administration of this chapter. Such instructions may provide for the delegation of functions to other county departments.

B. Compliance Certification. At the time of seeking a contract, a contractor shall certify to the county that it has and adheres to a policy consistent with this chapter or will have and adhere to such a policy prior to award of the contract. (Ord. 2002-0015 § 1 (part), 2002)

### **2.203.060 Enforcement and Remedies.**

For a contractor's violation of any provision of this chapter, the county department head responsible for administering the contract may do one or more of the following:

1. Recommend to the board of supervisors the termination of the contract; and/or,
2. Pursuant to chapter 2.202, seek the debarment of the contractor. (Ord. 2002-0015 § 1 (part), 2002)

### **2.203.070. Exceptions.**

- A. Other Laws. This chapter shall not be interpreted or applied to any contractor or to any employee in a manner inconsistent with the laws of the United States or California.
  - B. Collective Bargaining Agreements. This chapter shall be superseded by a collective bargaining agreement that expressly so provides.
- C. Small Business. This chapter shall not be applied to any contractor that meets all of the following:
1. Has ten or fewer employees during the contract period; and,
  2. Has annual gross revenues in the preceding twelve months which, if added to the annual amount of the contract awarded, are less than \$500,000; and,
  3. Is not an affiliate or subsidiary of a business dominant in its field of operation.

"Dominant in its field of operation" means having more than ten employees and annual gross revenues in the preceding twelve months which, if added to the annual amount of the contract awarded, exceed \$500,000.

"Affiliate or subsidiary of a business dominant in its field of operation" means a business which is at least 20 percent owned by a business dominant in its field of operation, or by partners, officers, directors, majority stockholders, or their equivalent, of a business dominant in that field of operation. (Ord. 2002-0015 § 1 (part), 2002)

### **2.203.090. Severability.**

If any provision of this chapter is found invalid by a court of competent jurisdiction, the remaining provisions shall remain in full force and effect. (Ord. 2002-0015 § 1 (part), 2002)

**EXHIBIT K1**

**CONTRACTOR EMPLOYEE JURY SERVICE PROGRAM  
APPLICATION FOR EXCEPTION AND CERTIFICATION FORM**

**COUNTY OF LOS ANGELES CONTRACTOR EMPLOYEE JURY SERVICE PROGRAM  
APPLICATION FOR EXCEPTION AND CERTIFICATION FORM**

The County's solicitation for this contract/purchase order (Request for Proposal or Invitation for Bid) is subject to the County of Los Angeles Contractor Employee Jury Service Program (Program) (Los Angeles County Code, Chapter 2.203). All bidders or proposers, whether a contractor or subcontractor, must complete this form to either 1) request an exception from the Program requirements or 2) certify compliance. Upon review of the submitted form, the County department will determine, in its sole discretion, whether the bidder or proposer is excepted from the Program.

Company Name:		
Company Address:		
City:	State:	Zip Code:
Telephone Number:		
Solicitation For (Type of Goods or Services):		

Complete Part I or Part II below, as appropriate.

Part I - Application for Exception From the Program

I request an exception from the Program for the following reason(s) (check the appropriate box(es) and attach documentation that supports your claim):

- ☐ My business does not meet the definition of "contractor," as defined in the Program," because my business has not received an aggregate sum of \$50,000 or more in any 12-month period under one or more County contracts or subcontracts (this exception is not available if the contract/purchase order itself will exceed \$50,000 in any 12 month period). I understand that the exception will be lost and I must comply with the Program if my revenues from the County exceed an aggregate sum of \$50,000 in any 12-month period.
- ☐ My business is a small business as defined in the Program. It 1) has 10 or fewer employees; and, 2) has annual gross revenues in the preceding twelve months which, if added to the annual amount of this contract, are \$500,000 or less; and, 3) is not an affiliate or subsidiary of a business dominant in its field of operation, as defined below. I understand that the exemption will be lost and I must comply with the Program if the number of employees in my business and my gross annual revenues exceed the above limits.

"Dominant in its field of operation" means having more than 10 employees, including full-time and part-time employees, and annual gross revenues in the preceding twelve months, which, if added to the annual amount of the contract awarded, exceed \$500,000.

"Affiliate or subsidiary of a business dominant in its field of operation" means a business which is at least 20 percent owned by a business dominant in its field of operation, or by partners, officers, directors, majority stockholders, or their equivalent, of a business dominant in that field of operation.

- ☐ My business is subject to a Collective Bargaining Agreement (attach agreement) that expressly provides that it supersedes all provisions of the Program.

OR

Part II - Certification of Compliance

My business has and adheres to a written policy that provides, on an annual basis, no less than five days of regular pay for actual jury service for full-time employees of the business who are also California residents, or my company will have and adhere to such a policy prior to award of the contract.

*I declare under penalty of perjury under the laws of the State of California that the information stated above is true and correct.*

Print Name:	Title:
Signature:	Date:

## **EXHIBIT L**

**OFFICE OF MANAGEMENT AND BUDGET CIRCULARS A-110**

**OFFICE OF MANAGEMENT AND BUDGET CIRCULARS A-122**

**OFFICE OF MANAGEMENT AND BUDGET CIRCULARS A-133**

## **EXHIBIT M**

### **CHILD SUPPORT COMPLIANCE PROGRAM**

## PRINCIPAL OWNER INFORMATION FORM

Los Angeles County Code Chapter 2.200 establishes the Los Angeles County Child Support Compliance Program. This Program requires the County to provide certain information to the Child Support Services Department (CSSD) concerning its employees and business licensees. It further requires that bidders or proposers for County contracts provide directly to the Child Support Services Department information concerning their "Principal Owners," that is, those natural persons who own an interest of 10 percent or more in the Contractor. For each "Principal Owner," the information which must be provided to the Child Support Services Department is: 1) the Principal Owner's name, 2) his or her title, and 3) whether or not the Contractor has made a payment of any sort to the Principal Owner.

IN ORDER TO COMPLY WITH THIS REQUIREMENT, COMPLETE THIS FORM AND SUBMIT IT DIRECTLY TO THE CHILD SUPPORT SERVICES DEPARTMENT AT THE ADDRESS OR FAX NUMBER SHOWN BELOW ON OR BEFORE THE DATE YOU SUBMIT A BID OR PROPOSAL TO A COUNTY DEPARTMENT. MAINTAIN DOCUMENTATION OF SUBMISSION. SOLE PRACTITIONER MEMBERS OF AN ASSOCIATION MUST COMPLETE AND SUBMIT INDIVIDUAL FORMS.

In addition, bidders or proposers must certify to the soliciting County department that they are in full compliance with the Program requirements by submitting the Child Support Compliance Program Certification along with the bid or proposal.

**To:** Child Support Services Department  
Special Projects  
P.O. Box 911009  
Los Angeles, CA 90091-1009

**FAX:** (323) 869-0634

**Telephone:** (323) 832-7277 or (323) 832-7276

**Contractor or Association Name as Shown on Bid or Proposal:** \_\_\_\_\_

**Contractor or Associated Member Name, if Contractor is an Association:** \_\_\_\_\_

**Contractor or Associated Member Address:** \_\_\_\_\_

**Telephone:** \_\_\_\_\_ **FAX:** \_\_\_\_\_

**County Department Receiving Bid or Proposal:** \_\_\_\_\_

**Type of Goods or Services To Be Provided:** \_\_\_\_\_

**Contract or Purchase Order No. (if applicable):** \_\_\_\_\_

**Principal Owners:** Please check appropriate box. If box I is checked, no further information is required. Please sign and date the form below.

- I. ☐ No natural person owns an interest of 10 percent or more in this Contractor.  
II. ☐ Required principal owner information is provided below. (Use a separate sheet if necessary.)

	<u>Name of Principal Owner</u>	<u>Title</u>	<u>Payment Received From Contractor</u>	
1.	_____	_____	[YES]	[NO]
2.	_____	_____	[YES]	[NO]



3. \_\_\_\_\_ [YES] [NO]

***I declare under penalty of perjury that the foregoing information is true and correct.***

By: \_\_\_\_\_ Date: \_\_\_\_\_  
(Signature of a principal owner, an officer, or manager responsible for submission of the bid or proposal to the County.)

\_\_\_\_\_  
(Print Name)

\_\_\_\_\_  
(Title/Position)

## CHILD SUPPORT COMPLIANCE PROGRAM CERTIFICATION

Los Angeles County Code Chapter 2.200 establishes the Los Angeles County Child Support Compliance Program. This Program requires the County to provide certain information to the Child Support Services Department (CSSD) concerning its employees and business licensees. It further requires that bidders or proposers for County contracts submit certifications of Program compliance to the soliciting County department along with their bids or proposals. (In an emergency procurement, as determined by the soliciting County department, these certifications may be provided immediately following the procurement.)

IN ORDER TO COMPLY WITH THIS REQUIREMENT, COMPLETE THIS FORM AND SUBMIT IT DIRECTLY TO THE SOLICITING COUNTY DEPARTMENT ALONG WITH YOUR BID OR PROPOSAL. IN ADDITION, PROVIDE A COPY TO THE CHILD SUPPORT SERVICES DEPARTMENT AT THE ADDRESS OR FAX NUMBER SHOWN BELOW. SOLE PRACTICIONER MEMBERS OF AN ASSOCIATION MUST COMPLETE AND SUBMIT INDIVIDUAL FORMS.

I, (print name as shown in bid or proposal ) \_\_\_\_\_,  
hereby submit this certification to the (County Department)  
, pursuant to the provisions of County Code Section 2.200.060 and hereby certify that  
(contractor name as shown in bid or proposal)  
, an independently-owned or franchiser-owned business (circle one), located at (contractor or, if  
an association, associated member address)

is in compliance with Los Angeles County's Child Support Compliance Program and has met the following requirements:

- 1) Submitted a completed Principal Owner Information Form to the Child Support Services Department;
- 2) Fully complied with employment and wage reporting requirements as required by the Federal Social Security Act (42 USC Section 653a) and/or California Unemployment Insurance Code Section 1088.5 and will continue to comply with such reporting requirements;
- 3) Fully complied with all lawfully served Wages and Earnings Withholding Orders or Notices of Wage and Earnings Assignment, pursuant to Code of Civil Procedure Section 706.031 and Family Code Section 5246(b) or pursuant to applicable provisions of the Uniform Interstate Family Support Act, and will continue to comply with such Orders or Notices.

***I declare under penalty of perjury that the foregoing is true and correct.***

Executed this \_\_\_\_\_ day of

(Month and Year)

at: \_\_\_\_\_  
(City/State)

(Telephone No.)

by: \_\_\_\_\_  
(Signature of a Principal Owner, an officer or manager responsible for submission of the bid or proposal to the County)

**Copy to: Child Support Services Department**

**Special Projects  
P. O. Box 911009  
Los Angeles, CA 90091-1099  
FAX: (323) 869-0634**

**Telephone: (323) 832-7277 or (323) 832-7276**

(CHILD SUPP CERT PRO CERT)

## **EXHIBIT N**

### **QUALITY ASSURANCE PLAN**

The CONTRACTOR shall establish and maintain a Quality Assurance Plan to assure that all COUNTY requirements as stated in this Agreement, are met or exceeded. A copy of this plan shall be submitted to the COUNTY'S Program Manager within thirty (30) days of the execution of this Agreement and shall by reference herein be incorporated into this Agreement as Exhibit N. Revisions to this plan shall be provided to the COUNTY Program Manager within two (2) weeks of the revision.



**OMB Circular A-122 (Text Only)**  
[OMB Home](#)  
**OFFICE OF MANAGEMENT AND BUDGET**

**Cost Principles for Non-Profit Organizations**

**AGENCY:** Office of Management and Budget

**ACTION:** Final revision of OMB Circular A-122, "Cost Principles for Non-Profit Organizations"

**SUMMARY:** The Office of Management and Budget (OMB) revises OMB Circular A-122 by amending the definition for equipment; requiring the breakout of indirect costs into two categories (facilities and administration) for certain non-profit organizations; modifying the multiple allocation basis; and, clarifying the treatment of certain cost items.

**DATES:** The revision is effective on June 1, 1998.

**FOR FURTHER INFORMATION CONTACT:** Federal agencies should contact Gilbert Tran, Office of Federal Financial Management, Office of Management and Budget, (202) 395-3993. Non-Federal organizations should contact the organization's Federal cognizant agency.

**SUPPLEMENTARY INFORMATION:**

**A. Background**

On October 6, 1995, the Office of Management and Budget (OMB) issued a final revision to OMB Circular A-122, "Cost Principles for Non-Profit Organizations," in the **Federal Register** (60 FR 52516) regarding interest allowability. The revision was made in a continuing effort to increase consistency across OMB's cost principles circulars A-122, A-21, "Cost Principles for Educational Institutions," and A-87, "Cost Principles for State, Local and Indian Tribal Governments." To further the goals of consistency, OMB proposed on the same date (60 FR 52522) to revise the definition of equipment, to clarify the treatment of certain types of costs, to modify the multiple allocation base method for computing indirect cost rate(s), and to place an upper-limit on payments of administrative expenses for certain non-profit organizations.

With this final revision, Circular A-122 consists of the Circular as issued in 1980 (45 FR 46022; July 8, 1980), as amended in 1984 (49 FR 18260; April 27, 1984), in 1987 (52 FR 19788; May 27, 1987), in 1995 (60 FR 52516; October 6, 1995), in 1997 (62 FR 45934; August 29, 1997), and in this notice. A recompilation of the entire Circular A-122, with all its amendments, accompanies the notice and is available in electronic form on the OMB Home Page at /OMB.

**B. Current Revisions**

Circular A-122 is revised in this notice to:

1. Amend the definition of equipment by increasing the capitalization threshold to the lesser amount used for financial statement purposes or \$5,000 (see paragraph 15).

2. Require major non-profit organizations (those receiving more than \$10 million in direct Federal funding) to report indirect cost rates by two major component categories: facilities and administration (see paragraph D, Attachment A).
3. Modify the multiple allocation base method (MAB) to be consistent with OMB Circular A-21 (see paragraph D.3). However, major non-profit organizations are not required to use the multiple allocation base method. MAB remains one of the three available methodologies for computing indirect costs.
4. Clarify the treatment of the following cost items to provide consistency across OMB's cost principles circulars (A-21 and A-87) and the Federal Acquisition Regulations, where applicable:
  - Alcoholic beverages
  - Advertising and public relations costs
  - Organization-furnished automobiles
  - Defense and prosecution of criminal and civil proceedings, claims, appeals and patent infringements
  - Housing and living expenses
  - Insurance
  - Memberships
  - Selling or marketing of goods and services
  - Severance pay for foreign nationals

OMB is not implementing the proposed restrictions on trustees' travel expenses at non-profit organizations. In line with this decision, and to further consistency between cost circulars, OMB will be amending Circular A-21 to allow trustees' travel expenses.

OMB defers considering an upper-limit on payment of administrative expenses until better data on indirect costs at non-profit organizations are collected.

### C. Comments and Responses

OMB received about 185 comments from non-profit organizations, Federal agencies, professional organizations and accounting firms. A summary of comments and OMB's responses are included in this notice. Several comments resulted in modifications to OMB's original proposal.

The comments and OMB's responses are summarized by section as follow.

#### **Equipment Definition**

Comment: Clarification is needed on the treatment of depreciation of those assets which had costs between the old \$500 threshold and the new \$5,000.

Response: In order to clarify the accounting for the undepreciated portion of any equipment costs as a result of a change in capitalization levels, paragraph 15 has been added to explain that the undepreciated amount may be recovered by continuing to claim otherwise allowable use allowances or depreciation on the equipment, or by amortizing the amount to be written off over a period of years as negotiated with the Federal cognizant agency.

Comment: Clarification is needed on whether equipment under the \$5,000 threshold, as established by the non-profit organizations' policy, requires Federal approval prior to acquisition.

Response: Equipment under the \$5,000 threshold, as established by the non-profit organization's policy, can be directly charged to sponsored agreements (subparagraph 15.b) without prior Federal approval.

Comment: Current subparagraph 13.b requires prior approval for special purpose equipment, as direct costs, with a unit cost of \$1,000 or more. This requirement is not consistent with the higher threshold of \$5,000 allowed in the proposed revision. This requirement should be revised to be consistent with the proposed revision.

Response: OMB agrees. The Circular is revised to require prior Federal approval only for special purpose equipment with a unit cost of \$5,000 or more.

### **Unallowable Cost Items**

These ten revised cost items are already unallowable under OMB Circulars A-21, "Cost Principles for Educational Institutions," and A-87, "Cost Principles for State, Local and Indian Tribal Governments," and/or the Federal Acquisition Regulations. OMB addressed the issue of trustees' travel in response to the comments received. For the other items, consistency across Federal cost regulations was a more significant issue than most of the commenters' concerns. Comments related to specific cost items are presented below, followed by OMB's responses.

### **Advertising and Public Relations Costs**

Comment: Current paragraph 37, Public information service costs, should be combined with the "Advertising" paragraph to be consistent with other OMB cost principles in Circulars A-21 and A-87.

Response: The commenter is correct. The treatment of public information service costs is now addressed in revised paragraph 1, Advertising and public relations costs. Current paragraph 37 is deleted.

Comment: Clarify the types of activities that are allowable as public relations costs. Public relations costs to carry out certain functions, such as legitimate program outreach, that are required under sponsored programs and contracts should be allowable.

Response: The Circular is revised to clarify that certain public relations costs for the purpose of communicating specific activities related to the sponsored programs to the public or the press are allowable costs. When they are necessary for program outreach effort as required by sponsored programs, public relations costs are allowable. Costs of advertising and public relations incurred solely to promote the organization are unallowable.

Comment: Clarify whether advertising media costs such as radio and television are allowable.

Response: As long as the public relations costs are specifically required by the sponsored programs or are related to the promotion of sponsored programs, any reasonable advertising



media, including magazines, newspapers, radio, television, direct mail, exhibits, and the like, can be used and its costs are allowable. See paragraph 1.a.

Comment: Community relation costs should be allowable as part of program outreach effort for Federal sponsored programs.

Response: Community relations are defined in subparagraph 1.b as "those activities dedicated to maintain the image of the organization or promoting understanding and favorable relations with the community or public at large or any segment of the public." Costs related to community relations are allowable when the costs are required or necessary to the performance of the sponsored programs.

#### **Organization-furnished automobiles for personal use**

Comment: For security and economic reasons, non-profit organizations often furnish automobiles and housing for its personnel working on Federal projects (e.g., overseas projects sponsored by the U.S. Agency for International Development or the U.S. State Department). These costs should be allowable as direct costs.

Response: The Circular is revised to allow these costs when they are necessary to perform the Federal projects, particularly the overseas sponsored projects with prior approval by the Federal awarding agency. These costs are allowable only as direct costs to the Federal projects, and not as fringe benefit or indirect costs.

Comment: The Circular should specify which types of automobiles are allowable or unallowable (e.g., cars, vans, trucks and buses).

Response: The types of automobiles are irrelevant for the purpose of determining the allowability of automobile costs. Rather, the determinant factors should be whether the automobile costs are reasonable and necessary for the performance of the Federal projects and authorized by the Federal awarding agency.

#### **Defense and prosecution of criminal and civil proceedings, claims, appeals and patent infringements**

Comment: Current paragraph 35.d, Professional service costs, should be combined with new paragraph 10.

Response: OMB agrees. Current paragraph 35.d is deleted. Professional service costs related to defense of antitrust suits, prosecution of claims against the Federal Government and patent infringement litigation are discussed in new paragraph 10. Professional service costs incurred for organization and reorganization are discussed in paragraph 31, Organization costs.

Comment: Clarification is needed as to when legal costs related to claims, appeals or proceeding become unallowable. Commenters noted that Federal agencies are inconsistent in the determination of the allowability of legal costs as one agency would allow legal costs up to the point where the case goes out of the Federal agency appeal process and to the courts, whereas other agencies would only allow legal costs through the first phase of appeals within

the Federal agency.

Response: The policy makes unallowable legal and related costs for either defending against claims made by the Federal Government or prosecuting claims against the Government. As such, once a final management decision letter is issued by the agency (for example, a disallowance letter), all legal and related costs are unallowable from that point forward. Unallowable costs would include claims and defenses pursued through agencies' formal appeal procedures such as administrative law judges and agency appeal boards. Note that legal and related costs may be allowable if the non-profit organization's position is sustained by the administrative appeal process or an agreement is reached between the organization and the Federal Government (see subparagraphs 10.b, 10.c, 10.d and 10.e). This revision is consistent with the language contained in OMB Circular A-21, "Cost Principles for Educational Institutions."

Comment: Some commenters objected to the proposed 80 percent limitation on reimbursement when the institution is found innocent.

Response: The proposed revision was retained because it provides consistency with procurement contracts. This limitation is based on the statutory language of Public Law 100-700, Major Fraud Act of 1988, November 19, 1988 (41 U.S.C., 256 (k)(5)), which only allows recovery of 80 percent of the legal costs.

Comment: Legal expenses to defend against lawsuits brought by a foreign government for violation of that country's law should be allowable.

Response: The Circular is revised in subparagraph 10.d to authorize Federal agencies to allow legal expenses to defend against lawsuits brought by a foreign government for violation of its law when such costs were necessary or were direct results of the performance of Federal sponsored programs. The same authorizations apply for legal costs for defense against lawsuits brought by state or local governments.

Comment: Legal fees to defend against lawsuits filed by former employees for termination or by subrecipients should be allowable.

Response: Legal fees incurred in defense of lawsuits not brought by a Federal, State, local or foreign government, except when the suits are brought by former employees under Section 2 of the Major Fraud Act of 1988 (Pub. L. 100-700), are allowable.

### **Housing and living expenses**

Comment: For security and economic reasons, non-profit organizations often furnish automobiles and housing for its personnel working on overseas Federal projects (e.g., overseas projects sponsored by the U.S. Agency for International Development). These costs should be allowable as direct costs.

Response: As previously noted (in the discussion of automobiles), the Circular is revised to allow these costs when they are necessary to perform the Federal projects and when they are approved by the Federal awarding agency. These costs are allowable only as direct costs to the

Federal projects, and not as fringe benefit or indirect costs.

### **Insurance**

Comment: General and casualty liability insurance costs for organization's directors and administrators should be allowable.

Response: General and casualty liability insurance costs for organization's directors and administrators are allowable, subject to limitations, as described in subparagraph 22.a.(2). New subparagraph 22.a.(2).f, Insurance against defects, prohibits the reimbursement of costs against Federally sponsored awards for product (or services) liability insurance costs.

Comment: Medical liability insurance costs for participants in Federal training programs should be allowable.

Response: Medical liability insurance costs associated with participants in Federal training programs are allowable to Federal programs as direct costs.

Comment: Malpractice insurance costs for physicians should be direct charged to Federal programs while malpractice insurance costs for nurses or laboratory assistants, which are immaterial in most cases, should be charged as indirect costs.

Response: Subparagraph B.2 of Attachment A provides that when a direct cost is of minor amounts, it may be treated as an indirect cost for reasons of practicality and efficiency, provided that the accounting treatment for such cost is consistently applied to all final cost objectives. Therefore, when malpractice insurance costs for nurses or lab technicians are immaterial in relation to its effect on the overall indirect cost rates of the organization, they may be treated as indirect costs.

### **Memberships**

Comment: Membership costs in civic and community organizations should be allowable.

Response: Membership costs are allowable for business and professional organizations. The Circular is further revised to allow membership costs in civic and community organizations when associations with these organizations are essential to the performance of the Federal programs (as an outreach function). These membership costs must be approved by the Federal cognizant agency.

Comment: Costs of membership in organizations that lobby should be unallowable.

Response: Paragraph 25 of the Circular disallows lobbying costs. Membership dues to lobbying organizations are therefore unallowable. The unallowable portion of membership dues is determined by the percentage of lobbying activities versus other allowable activities of the lobbying organization.

### **Selling or Marketing of Goods and Services**

Comment: Clarification is needed for what types of activities are considered to be the selling or marketing of goods and services.

Response: Selling or marketing of goods and services generally include an organization's efforts to market the organization's products or services such as through advertising, organizational image enhancement, market planning and direct selling. Direct selling efforts are those acts or actions used to induce particular customers to purchase particular products or services of the organization. The allowability provisions for advertising costs are described in paragraph 1.

Comment: The guidelines for selling or marketing of goods and services should be consistent with those in FAR 31.205.38(c)(1).

Response: FAR 31.205.38(c)(1) allows direct selling costs at commercial contractors if they are reasonable in amount. By contrast to the commercial contract context, direct selling costs are generally not considered to be necessary costs for the performance of Federal sponsored programs by non-profit organizations. In those cases where they are essential for certain Federal sponsored programs, these costs can be charged as direct costs to the Federal sponsored programs if they are approved by the Federal awarding agency.

Comment: Given that the Bayh-Dole Act encouraged technology transfer, selling or marketing costs of goods or services should be allowable costs. At the minimum, these costs should be allowable as direct costs to the Federal projects.

Response: The Circular is revised to allow selling or marketing costs as direct costs to some Federal sponsored programs when approved by the Federal awarding agency.

### **Severance Pay**

Comment: Early retirement benefits should be allowable costs.

Response: Early retirement benefit costs are allowable costs, subject to limitations, and are discussed in subparagraph 6.f, Fringe Benefits, along with other forms of fringe benefits. Paragraph 49, Severance Pay, deals only with severance policy, i.e., dismissal, and the reimbursement of its costs.

Comment: Guidelines for costs of severance pay to foreign nationals in excess of customary or prevailing practices should be consistent with section 2151 of the Federal Acquisition Streamlining Act of 1994 (FASA).

Response: OMB agrees. The Circular is revised to be consistent with FASA guidelines for severance pay to foreign nationals in excess of customary or prevailing practices. As a result, the Federal awarding agency may allow these costs when they are necessary for the performance of the Federal sponsored programs.

### **Trustees' Travel**

Comment: Several commenters opposed the proposal to disallow trustees' travel costs citing the difficulty of retaining or obtaining members to serve voluntarily on the Board of Trustees (or Directors) of a non-profit organization, if Board members have to pay for their own travel expenses to attend Board meetings. The commenters added that since serving on a non-profit organization's Board is often not as prestigious and desirable as serving on a University's Board (where trustees' travel costs are unallowable under Circular A-21), non-reimbursement of the travel costs would inhibit the recruitment of Board members.

Response: OMB concurs that disallowing the reimbursement of trustees' travel costs could inhibit the recruitment of qualified Board members (particularly at smaller non-profit organizations), thereby hampering the operations of a non-profit organization. OMB also recognizes that trustees' travel costs are reasonable and necessary business costs. As a result, trustees' travel costs remain allowable.

Comment: Trustees' travel costs should be allowable if they are reasonable. Some suggested tests for reasonableness of trustees' travel costs are: limit number of allowed trips per year, restriction of trips to organization's principal place of business or reasonable surroundings, distinction between scheduled Board meetings and emergency Board meetings, and disallowance of first-class airfare travels.

Response: All costs charged to Federal projects must satisfy a reasonableness test. Although some of the suggested reasonableness tests appear to be good, OMB does not believe it is necessary at this time to impose specific restrictions on trustees' travel expenses. The reasonableness of a particular travel expense remains at the judgement of Federal negotiators.

Comment: At Head Start organizations, some Trustee members are first sent for training in the operations of a Head Start program. These travel costs related to training should be allowable.

Response: Travel costs related to training and education are allowable, subject to limitations, and are addressed in paragraph 53 of the Circular, Training and education costs.

Comment: At Head Start organizations, there often are several advisory boards in addition to the Board of Trustees (or Directors). These advisory boards are involved in day-to-day operations of the organizations and often incur travel costs. Are these costs subject to the same restrictions as trustees' travel?

Response: Travel costs for members of advisory groups are allowable, subject to the limitations in paragraph 55, Travel costs.

### **Multiple Allocation Basis (MAB)**

Comment: The multiple allocation method for calculating indirect costs rates is much more complicated and burdensome than the simplified method and it will cost non-profit organizations much more to prepare the indirect cost proposal. Several commenters recommended the flexibility of using one of the three different allocation methods as they are currently described in the Circular. The multiple allocation basis (MAB) should remain an optional allocation methodology rather than a required methodology for certain organizations.

Response: The use of MAB for major non-profit organizations promotes consistency in the calculation and the reporting of indirect costs. It would facilitate the accumulation of indirect cost data by cost components (i.e., facilities and administration) and provide comparable rates between major research non-profit organizations and universities. However, OMB recognizes that a conversion to MAB may require some substantial changes in the organization's accounting system and that MAB is not practical for single-function organizations. Therefore, the Circular continues to allow non-profit organizations to use any of the current three allocation methodologies.

Comment: Several commenters suggested raising the threshold for the requirement to \$25 million in direct Federal funding. Several commenters also suggested an exemption from this requirement for single-function organizations regardless of Federal funding levels.

Response: The Circular is revised to allow the use of the current three allocation methodologies for all non-profit organizations. For organizations that receive more than \$10 million in direct Federal funding, a breakout of indirect costs into two components, facilities and administration, is required regardless of the selected allocation methodology.

Comment: The allocation methodology for general administration under MAB on the basis of modified total direct costs conflicts with the required methodology under Cost Accounting Standard (CAS) 410 applicable to contracts using the salaries and wages basis. One commenter suggested that a fully CAS-covered non-profit organization be exempted from the MAB requirement.

Response: MAB is not a requirement for non-profit organizations and remains one of the three available methodologies in the Circular for computing indirect costs. In addition, CAS-covered non-profit organizations should continue to follow CAS with respect to the measurement, assignment and allocation of costs.

Comment: The revision should clarify that the modified total direct cost base should only include the first \$25,000 of a subcontract regardless of the period during which the project is started (consistent with OMB Circular A-21).

Response: The modified total direct cost base, described in subparagraph D.3.f of the Circular, includes the first \$25,000 of each subgrant or subcontract regardless of the period covered by the subgrant or subcontract. Subgrant or subcontract costs above \$25,000 shall be excluded from the modified total direct cost base. For example, for a \$300,000 subgrant that lasts three years, only the first \$25,000 incurred on the award should be included in the modified total direct cost base.

### **Administrative Cap of 26 percent**

Comment: Most commenters strongly opposed the 26 percent administrative cap stating that such limitation on cost reimbursement is arbitrary, capricious, and unnecessary. Some argued that a cap would be financially disastrous to non-profit organizations because they receive most of their funding from Federal sources (unlike universities). A detailed analysis is urged to determine the average administrative costs applicable to non-profit organizations, if an

administrative cap is to be implemented at non-profit organizations.

Response: Based on the comments against the implementation of an administrative cap at non-profit organizations, OMB defers the consideration of establishing any administrative cap until better data on indirect costs at non-profit organizations can be collected. If OMB believes that an administrative cap should be implemented, it would be proposed in a subsequent notice.

**Other**

Comment: Attachment C of the Circular should be updated since a few listed organizations no longer exist.

Response: OMB agrees. Attachment C is updated to delete those organizations that no longer exist or are no longer exempted from OMB Circular A-122.

Franklin D. Raines  
Director

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Attachments A, B and C of Circular A-122 are revised as follows:

**A. Attachment A**

1. Add subparagraph 3 to paragraph C ("Indirect Costs").

3. Indirect costs shall be classified within two broad categories: "Facilities" and "Administration." "Facilities" is defined as depreciation and use allowances on buildings, equipment and capital improvement, interest on debt associated with certain buildings, equipment and capital improvements, and operations and maintenance expenses. "Administration" is defined as general administration and general expenses such as the director's office, accounting, personnel, library expenses and all other types of expenditures not listed specifically under one of the subcategories of "Facilities" (including cross allocations from other pools, where applicable). See indirect cost rate reporting requirements in subparagraphs D.2.e and D.3.g.

2. Add subparagraph 2.e to paragraph D.

e. For an organization that receives more than \$10 million in Federal funding of direct costs in a fiscal year, a breakout of the indirect cost component into two broad categories, Facilities and Administration as defined in subparagraph C.3, is required. The rate in each case shall be stated as the percentage which the amount of the particular indirect cost category (i.e., Facilities or Administration) is of the distribution base identified with that category.

3. Replace subparagraph D.3 with the following:

**3. Multiple allocation base method.**

a. General. Where an organization's indirect costs benefit its major functions in varying degrees, indirect costs shall be accumulated into separate cost groupings, as described in subparagraph

b. Each grouping shall then be allocated individually to benefitting functions by means of a base which best measures the relative benefits. The default allocation bases by cost pool are described in subparagraph c.

b. Identification of indirect costs. Cost groupings shall be established so as to permit the allocation of each grouping on the basis of benefits provided to the major functions. Each grouping shall constitute a pool of expenses that are of like character in terms of functions they benefit and in terms of the allocation base which best measures the relative benefits provided to each function. The groupings are classified within the two broad categories: "Facilities" and "Administration," as described in subparagraph C.3. The indirect cost pools are defined as follows:

(1) Depreciation and use allowances. The expenses under this heading are the portion of the costs of the organization's buildings, capital improvements to land and buildings, and equipment which are computed in accordance with paragraph 11 of Attachment B ("Depreciation and use allowances").

(2) Interest. Interest on debt associated with certain buildings, equipment and capital improvements are computed in accordance with paragraph 23 of Attachment B ("Interest, fund raising, and investment management costs").

(3) Operation and maintenance expenses. The expenses under this heading are those that have been incurred for the administration, operation, maintenance, preservation, and protection of the organization's physical plant. They include expenses normally incurred for such items as: janitorial and utility services; repairs and ordinary or normal alterations of buildings, furniture and equipment; care of grounds; maintenance and operation of buildings and other plant facilities; security; earthquake and disaster preparedness; environmental safety; hazardous waste disposal; property, liability and other insurance relating to property; space and capital leasing; facility planning and management; and, central receiving. The operation and maintenance expenses category shall also include its allocable share of fringe benefit costs, depreciation and use allowances, and interest costs.

(4) General administration and general expenses. The expenses under this heading are those that have been incurred for the overall general executive and administrative offices of the organization and other expenses of a general nature which do not relate solely to any major function of the organization. This category shall also include its allocable share of fringe benefit costs, operation and maintenance expense, depreciation and use allowances, and interest costs. Examples of this category include central offices, such as the director's office, the office of finance, business services, budget and planning, personnel, safety and risk management, general counsel, management information systems, and library costs.

In developing this cost pool, special care should be exercised to ensure that costs incurred for the same purpose in like circumstances are treated consistently as either direct or indirect costs. For example, salaries of technical staff, project supplies, project publication, telephone toll charges, computer costs, travel costs, and specialized services costs shall be treated as direct costs wherever identifiable to a particular program. The salaries and wages of administrative and pooled clerical staff should normally be treated as indirect costs. Direct charging of these costs may be appropriate where a major project or activity explicitly requires and budgets for administrative or clerical services and other individuals involved can be identified with the program or activity. Items such as office supplies, postage, local telephone costs, periodicals and memberships should normally be treated as indirect costs.



c. Allocation bases. Actual conditions shall be taken into account in selecting the base to be used in allocating the expenses in each grouping to benefitting functions. The essential consideration in selecting a method or a base is that it is the one best suited for assigning the pool of costs to cost objectives in accordance with benefits derived; a traceable cause and effect relationship; or logic and reason, where neither the cause nor the effect of the relationship is determinable. When an allocation can be made by assignment of a cost grouping directly to the function benefited, the allocation shall be made in that manner. When the expenses in a cost grouping are more general in nature, the allocation shall be made through the use of a selected base which produces results that are equitable to both the Federal Government and the organization. The distribution shall be made in accordance with the bases described herein unless it can be demonstrated that the use of a different base would result in a more equitable allocation of the costs, or that a more readily available base would not increase the costs charged to sponsored awards. The results of special cost studies (such as an engineering utility study) shall not be used to determine and allocate the indirect costs to sponsored awards.

(1) Depreciation and use allowances. Depreciation and use allowances expenses shall be allocated in the following manner:

(a) Depreciation or use allowances on buildings used exclusively in the conduct of a single function, and on capital improvements and equipment used in such buildings, shall be assigned to that function.

(b) Depreciation or use allowances on buildings used for more than one function, and on capital improvements and equipment used in such buildings, shall be allocated to the individual functions performed in each building on the basis of usable square feet of space, excluding common areas, such as hallways, stairwells, and restrooms.

(c) Depreciation or use allowances on buildings, capital improvements and equipment related space (e.g., individual rooms, and laboratories) used jointly by more than one function (as determined by the users of the space) shall be treated as follows. The cost of each jointly used unit of space shall be allocated to the benefitting functions on the basis of:

(i) the employees and other users on a full-time equivalent (FTE) basis or salaries and wages of those individual functions benefitting from the use of that space; or

(ii) organization-wide employee FTEs or salaries and wages applicable to the benefitting functions of the organization.

(d) Depreciation or use allowances on certain capital improvements to land, such as paved parking areas, fences, sidewalks, and the like, not included in the cost of buildings, shall be allocated to user categories on a FTE basis and distributed to major functions in proportion to the salaries and wages of all employees applicable to the functions.

(2) Interest. Interest costs shall be allocated in the same manner as the depreciation or use allowances on the buildings, equipment and capital equipments to which the interest relates.

(3) Operation and maintenance expenses. Operation and maintenance expenses shall be allocated in the same manner as the depreciation and use allowances.

(4) General administration and general expenses. General administration and general expenses shall be allocated to benefitting functions based on modified total direct costs (MTDC), as described in subparagraph D.3.f. The expenses included in this category could be grouped first according to major functions of the organization to which they render services or provide benefits. The aggregate expenses of each group shall then be allocated to benefitting functions based on MTDC.

d. Order of distribution.

(1) Indirect cost categories consisting of depreciation and use allowances, interest, operation and maintenance, and general administration and general expenses shall be allocated in that order to the remaining indirect cost categories as well as to the major functions of the organization. Other cost categories could be allocated in the order determined to be most appropriate by the organization. When cross allocation of costs is made as provided in subparagraph (2), this order of allocation does not apply.

(2) Normally, an indirect cost category will be considered closed once it has been allocated to other cost objectives, and costs shall not be subsequently allocated to it. However, a cross allocation of costs between two or more indirect costs categories could be used if such allocation will result in a more equitable allocation of costs. If a cross allocation is used, an appropriate modification to the composition of the indirect cost categories is required.

e. Application of indirect cost rate or rates. Except where a special indirect cost rate(s) is required in accordance with subparagraph D.5, the separate groupings of indirect costs allocated to each major function shall be aggregated and treated as a common pool for that function. The costs in the common pool shall then be distributed to individual awards included in that function by use of a single indirect cost rate.

f. Distribution basis. Indirect costs shall be distributed to applicable sponsored awards and other benefitting activities within each major function on the basis of MTDC. MTDC consists of all salaries and wages, fringe benefits, materials and supplies, services, travel, and subgrants and subcontracts up to the first \$25,000 of each subgrant or subcontract (regardless of the period covered by the subgrant or subcontract). Equipment, capital expenditures, charges for patient care, rental costs and the portion in excess of \$25,000 shall be excluded from MTDC. Participant support costs shall generally be excluded from MTDC. Other items may only be excluded when the Federal cost cognizant agency determines that an exclusion is necessary to avoid a serious inequity in the distribution of indirect costs.

g. Individual Rate Components. An indirect cost rate shall be determined for each separate indirect cost pool developed. The rate in each case shall be stated as the percentage which the amount of the particular indirect cost pool is of the distribution base identified with that pool. Each indirect cost rate negotiation or determination agreement shall include development of the rate for each indirect cost pool as well as the overall indirect cost rate. The indirect cost pools shall be classified within two broad categories: "Facilities" and "Administration," as described in subparagraph C.3.

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**B. Attachment B**

Revise the following cost items in Attachment B to Circular A-122 ("Selected Items of Cost").

1. Revise the Table of Contents for Attachment B to read:

1. Advertising and public relations costs
2. Alcoholic beverages
3. Bad debts
4. Bid and proposal costs (reserved)
5. Bonding costs
6. Communication costs
7. Compensation for personal services
8. Contingency provisions
9. Contributions
10. Defense and prosecution of criminal and civil proceedings, claims, appeals and patent infringement
11. Depreciation and use allowances
12. Donations
13. Employee morale, health, and welfare costs and credits
14. Entertainment costs
15. Equipment and other capital expenditures
16. Fines and penalties
17. Fringe benefits
18. Goods or services for personal use
19. Housing and personal living expenses
20. Idle facilities and idle capacity
21. Independent research and development (reserved)
22. Insurance and indemnification
23. Interest, fund raising, and investment management costs
24. Labor relations costs
25. Lobbying costs
26. Losses on other awards
27. Maintenance and repair costs
28. Materials and supplies
29. Meetings and conferences
30. Memberships, subscriptions, and professional activity costs
31. Organization costs
32. Overtime, extra-pay shift, and multi-shift premiums
33. Page charges in professional journals
34. Participant support costs
35. Patent costs
36. Pension plans
37. Plant security costs
38. Pre-award costs
39. Professional service costs
40. Profits and losses on disposition of depreciable property or other capital assets

41. Publication and printing costs
42. Rearrangement and alteration costs
43. Reconversion costs
44. Recruiting costs
45. Relocation costs
46. Rental costs
47. Royalties and other costs for use of patents and copyrights
48. Selling and marketing
49. Severance pay
50. Specialized service facilities
51. Taxes
52. Termination costs
53. Training and education costs
54. Transportation costs
55. Travel costs
56. Trustees

2. Revise and retitle paragraph 1 to read:

**1. Advertising and public relations costs.**

a. The term advertising costs means the costs of advertising media and corollary administrative costs. Advertising media include magazines, newspapers, radio and television programs, direct mail, exhibits, and the like.

b. The term public relations includes community relations and means those activities dedicated to maintaining the image of the organization or maintaining or promoting understanding and favorable relations with the community or public at large or any segment of the public.

c. The only allowable advertising costs are those which are solely for:

(1) The recruitment of personnel required for the performance by the organization of obligations arising under a sponsored award, when considered in conjunction with all other recruitment costs, as set forth in paragraph 44 ("Recruiting costs");

(2) The procurement of goods and services for the performance of a sponsored award;

(3) The disposal of scrap or surplus materials acquired in the performance of a sponsored award except when organizations are reimbursed for disposal costs at a predetermined amount in accordance with OMB Circular A-110, Sec. \_\_\_\_\_.34, "Equipment"; or

(4) Other specific purposes necessary to meet the requirements of the sponsored award.

d. The only allowable public relations costs are:

(1) Costs specifically required by sponsored awards;

(2) Costs of communicating with the public and press pertaining to specific activities or accomplishments which result from performance of sponsored awards (these costs are considered necessary as part of the outreach effort for the sponsored awards); or

(3) Costs of conducting general liaison with news media and government public relations officers, to the extent that such activities are limited to communication and liaison necessary to keep the public informed on matters of public concern, such as notices of contract/grant awards, financial matters, etc.

e. Costs identified in subparagraphs c and d if incurred for more than one sponsored award or for both sponsored work and other work of the organization, are allowable to the extent that the principles in paragraphs B ("Direct Costs") and C ("Indirect Costs") of Attachment A are observed.

f. Unallowable advertising and public relations costs include the following:

(1) All advertising and public relations costs other than as specified in subparagraphs c, d, and e;

(2) Costs of meetings or other events related to fund raising or other organizational activities including:

(i) Costs of displays, demonstrations, and exhibits;

(ii) Costs of meeting rooms, hospitality suites, and other special facilities used in conjunction with shows and other special events; and

(iii) Salaries and wages of employees or cost of services engaged in setting up and displaying exhibits, making demonstrations, and providing briefings;

(3) Costs of promotional items and memorabilia, including models, gifts, and souvenirs;

(4) Costs of advertising and public relations designed solely to promote the organization.

3. Renumber current paragraphs 2 through 8 as paragraphs 3 through 9, respectively.

4. Add the following new paragraph 2:

2. **Alcoholic beverages.** Costs of alcoholic beverages are unallowable.

5. In paragraph 7 ("Compensation for personal services"), as renumbered above in item 3, rename the current subparagraph g ("Pension costs"), as subparagraph h. Add a new subparagraph g:

g. **Organization-furnished automobiles.** That portion of the cost of organization-furnished automobiles that relates to personal use by employees (including transportation to and from work) is unallowable as fringe benefit or indirect costs regardless of whether the cost is reported as taxable income to the employees. These costs are allowable as direct costs to sponsored award when necessary for the performance of the sponsored award and approved by awarding

agencies.

6. Renumber current paragraphs 9 through 15 as paragraphs 11 through 17, respectively.

7. Add new paragraph 10:

**10. Defense and prosecution of criminal and civil proceedings, claims, appeals and patent infringement.**

a. Definitions.

(1) Conviction, as used herein, means a judgment or a conviction of a criminal offense by any court of competent jurisdiction, whether entered upon as a verdict or a plea, including a conviction due to a plea of *nolo contendere*.

(2) Costs include, but are not limited to, administrative and clerical expenses; the cost of legal services, whether performed by in-house or private counsel; and the costs of the services of accountants, consultants, or others retained by the organization to assist it; costs of employees, officers and trustees, and any similar costs incurred before, during, and after commencement of a judicial or administrative proceeding that bears a direct relationship to the proceedings.

(3) Fraud, as used herein, means (i) acts of fraud corruption or attempts to defraud the Federal Government or to corrupt its agents, (ii) acts that constitute a cause for debarment or suspension (as specified in agency regulations), and (iii) acts which violate the False Claims Act, 31 U.S.C., sections 3729-3731, or the Anti-Kickback Act, 41 U.S.C., sections 51 and 54.

(4) Penalty does not include restitution, reimbursement, or compensatory damages.

(5) Proceeding includes an investigation.

b. (1) Except as otherwise described herein, costs incurred in connection with any criminal, civil or administrative proceeding (including filing of a false certification) commenced by the Federal Government, or a State, local or foreign government, are not allowable if the proceeding: (1) relates to a violation of, or failure to comply with, a Federal, State, local or foreign statute or regulation by the organization (including its agents and employees), and (2) results in any of the following dispositions:

(a) In a criminal proceeding, a conviction.

(b) In a civil or administrative proceeding involving an allegation of fraud or similar misconduct, a determination of organizational liability.

(c) In the case of any civil or administrative proceeding, the imposition of a monetary penalty.

(d) A final decision by an appropriate Federal official to debar or suspend the organization, to rescind or void an award, or to terminate an award for default by reason of a violation or failure to comply with a law or regulation.

(e) A disposition by consent or compromise, if the action could have resulted in any of the dispositions described in (a), (b), (c) or (d).

(2) If more than one proceeding involves the same alleged misconduct, the costs of all such proceedings shall be unallowable if any one of them results in one of the dispositions shown in subparagraph b.(1).

c. If a proceeding referred to in subparagraph b is commenced by the Federal Government and is resolved by consent or compromise pursuant to an agreement entered into by the organization and the Federal Government, then the costs incurred by the organization in connection with such proceedings that are otherwise not allowable under subparagraph b may be allowed to the extent specifically provided in such agreement.

d. If a proceeding referred to in subparagraph b is commenced by a State, local or foreign government, the authorized Federal official may allow the costs incurred by the organization for such proceedings, if such authorized official determines that the costs were incurred as a result of (1) a specific term or condition of a federally-sponsored award, or (2) specific written direction of an authorized official of the sponsoring agency.

e. Costs incurred in connection with proceedings described in subparagraph b, but which are not made unallowable by that subparagraph, may be allowed by the Federal Government, but only to the extent that:

(1) The costs are reasonable in relation to the activities required to deal with the proceeding and the underlying cause of action;

(2) Payment of the costs incurred, as allowable and allocable costs, is not prohibited by any other provision(s) of the sponsored award;

(3) The costs are not otherwise recovered from the Federal Government or a third party, either directly as a result of the proceeding or otherwise; and,

(4) The percentage of costs allowed does not exceed the percentage determined by an authorized Federal official to be appropriate, considering the complexity of the litigation, generally accepted principles governing the award of legal fees in civil actions involving the United States as a party, and such other factors as may be appropriate. Such percentage shall not exceed 80 percent. However, if an agreement reached under subparagraph c has explicitly considered this 80 percent limitation and permitted a higher percentage, then the full amount of costs resulting from that agreement shall be allowable.

f. Costs incurred by the organization in connection with the defense of suits brought by its employees or ex-employees under section 2 of the Major Fraud Act of 1988 (Pub. L. 100-700), including the cost of all relief necessary to make such employee whole, where the organization was found liable or settled, are unallowable.

g. Costs of legal, accounting, and consultant services, and related costs, incurred in connection with defense against Federal Government claims or appeals, antitrust suits, or the prosecution

of claims or appeals against the Federal Government, are unallowable.

h. Costs of legal, accounting, and consultant services, and related costs, incurred in connection with patent infringement litigation, are unallowable unless otherwise provided for in the sponsored awards.

i. Costs which may be unallowable under this paragraph, including directly associated costs, shall be segregated and accounted for by the organization separately. During the pendency of any proceeding covered by subparagraphs b and f, the Federal Government shall generally withhold payment of such costs. However, if in the best interests of the Federal Government, the Federal Government may provide for conditional payment upon provision of adequate security, or other adequate assurance, and agreements by the organization to repay all unallowable costs, plus interest, if the costs are subsequently determined to be unallowable.

8. In paragraph 15 ("Equipment and other capital expenditures"), as renumbered in item 6 above, replace subparagraphs 15.a.(1) and 15.b.(2) to read:

15.a.(1) "Equipment" means an article of nonexpendable, tangible personal property having a useful life of more than one year and an acquisition cost which equals or exceeds the lesser of (a) the capitalization level established by the organization for the financial statement purposes, or (b) \$5000. The unamortized portion of any equipment written off as a result of a change in capitalization levels may be recovered by continuing to claim the otherwise allowable use allowances or depreciation on the equipment, or by amortizing the amount to be written off over a period of years as negotiated with the Federal cognizant agency.

15.b.(2) Capital expenditures for special purpose equipment are allowable as direct costs, provided that items with a unit cost of \$5000 or more have the prior approval of awarding agency.

9. Renumber current paragraphs 16 through 36 as paragraphs 20 through 40, respectively.

10. Add new paragraph 18:

**18. Goods or services for personal use.** Costs of goods or services for personal use of the organization's employees are unallowable regardless of whether the cost is reported as taxable income to the employees.

11. Add new paragraph 19:

**19. Housing and personal living expenses.**

a. Costs of housing (e.g., depreciation, maintenance, utilities, furnishings, rent, etc.), housing allowances and personal living expenses for/of the organization's officers are unallowable as fringe benefit or indirect costs regardless of whether the cost is reported as taxable income to the employees. These costs are allowable as direct costs to sponsored awards when necessary for the performance of the sponsored award and approved by awarding agencies.

b. The term "officers" includes current and past officers and employees.



12. Add to paragraph 22.a.(2) ("Insurance and indemnification"), as renumbered in item 9, subparagraphs (f) and (g):

(f) Insurance against defects. Costs of insurance with respect to any costs incurred to correct defects in the organization's materials or workmanship are unallowable.

(g) Medical liability (malpractice) insurance. Medical liability insurance is an allowable cost of Federal research programs only to the extent that the Federal research programs involve human subjects or training of participants in research techniques. Medical liability insurance costs shall be treated as a direct cost and shall be assigned to individual projects based on the manner in which the insurer allocates the risk to the population covered by the insurance.

13. Revise paragraph 30, as renumbered in item 9, to read:

**30. Memberships, subscriptions and professional activity costs.**

a. Costs of the organization's membership in business, technical, and professional organizations are allowable.

b. Costs of the organization's subscriptions to business, professional, and technical periodicals are allowable.

c. Costs of meetings and conferences, when the primary purpose is the dissemination of technical information, are allowable. This includes costs of meals, transportation, rental of facilities, and other items incidental to such meetings or conferences.

d. Costs of membership in any civic or community organization are allowable with prior approval by Federal cognizant agency.

e. Costs of membership in any country club or social or dining club or organization are unallowable.

14. Delete subparagraph 39.d, as renumbered in item 9.

15. Delete current paragraph 37 ("Public service costs").

16. Renumber current paragraphs 38 through 44 as paragraphs 41 through 47, respectively.

17. Revise paragraph 44, as renumbered in item 16, to read:

**44. Recruiting costs.**

a. Subject to subparagraphs b, c, and d, and provided that the size of the staff recruited and maintained is in keeping with workload requirements, costs of "help wanted" advertising, operating costs of an employment office necessary to secure and maintain an adequate staff, costs of operating an aptitude and educational testing program, travel costs of employees while engaged in recruiting personnel, travel costs of applicants for interviews for prospective employment, and relocation costs incurred incident to recruitment of new employees, are allowable to the extent that such costs are incurred pursuant to a well-managed recruitment program. Where the organization uses employment agencies, costs that are not in excess of standard commercial rates for such services are allowable.

b. In publications, costs of help wanted advertising that includes color, includes advertising material for other than recruitment purposes, or is excessive in size (taking into consideration recruitment purposes for which intended and normal organizational practices in this respect), are unallowable.

c. Costs of help wanted advertising, special emoluments, fringe benefits, and salary allowances incurred to attract professional personnel from other organizations that do not meet the test of reasonableness or do not conform with the established practices of the organization, are unallowable.

d. Where relocation costs incurred incident to recruitment of a new employee have been allowed either as an allocable direct or indirect cost, and the newly hired employee resigns for reasons within his control within twelve months after being hired, the organization will be required to refund or credit such relocation costs to the Federal Government.

18. Renumber current paragraphs 45 through 51 as paragraphs 49 through 55, respectively.

19. Add new paragraph 48:

48. **Selling and marketing.** Costs of selling and marketing any products or services of the organization (unless allowed under paragraph 1 as allowable public relations costs) are unallowable. These costs, however, are allowable as direct costs, with prior approval by awarding agencies, when they are necessary for the performance of Federal programs.

20. Add new subparagraphs c, d and e to paragraph 49 ("Severance pay"), as renumbered in item 18, as follow:

c. Costs incurred in certain severance pay packages (commonly known as "a golden parachute" payment) which are in an amount in excess of the normal severance pay paid by the organization to an employee upon termination of employment and are paid to the employee contingent upon a change in management control over, or ownership of, the organization's assets are unallowable.

d. Severance payments to foreign nationals employed by the organization outside the United States, to the extent that the amount exceeds the customary or prevailing practices for the organization in the United States are unallowable, unless they are necessary for the performance of Federal programs and approved by awarding agencies.

e. Severance payments to foreign nationals employed by the organization outside the United States due to the termination of the foreign national as a result of the closing of, or curtailment of activities by, the organization in that country, are unallowable, unless they are necessary for the performance of Federal programs and approved by awarding agencies.

21. Add new paragraph 56:

56. **Trustees.** Travel and subsistence costs of trustees (or directors) are allowable. The costs are subject to restrictions regarding lodging, subsistence and air travel costs provided in paragraph 55.

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**C. Attachment C**

1. Delete the following organizations from Attachment C. These organizations either no longer exist or are no longer exempted from complying with Circular A-122.

- Associated Universities, Incorporated, Washington, D.C.
- Associated Universities for Research and Astronomy, Tucson, Arizona
- Center for Energy and Environmental Research (CEER), (University of Puerto Rico), Commonwealth of Puerto Rico
- Comparative Animal Research Laboratory (CARL), (University of Tennessee), Oak Ridge, Tennessee
- Institute of Gas Technology, Chicago, Illinois
- Montana Energy Research and Development Institute, Inc., (MERDI), Butte, Montana
- Project Management Corporation, Oak Ridge, Tennessee
- Sandia Corporation, Albuquerque, New Mexico
- Universities Corporation for Atmospheric Research, Boulder, Colorado

2. Change Argonne Universities Association, Chicago, Illinois to Argonne National Laboratory, Chicago, Illinois.

3. Change the location of the Institute for Defense Analysis in Virginia from Arlington to Alexandria.

4. Replace Midwest Research Institute, Headquartered in Kansas City, Missouri to National Renewable Energy Laboratory, Golden, Colorado.

D. A recompilation of the entire Circular A-122, with all its amendments, follows:

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CIRCULAR NO. A-122

Revised

TO THE HEADS OF EXECUTIVE DEPARTMENTS AND ESTABLISHMENTS

SUBJECT: Cost Principles for Non-Profit Organizations

1. **Purpose.** This Circular establishes principles for determining costs of grants, contracts and other agreements with non-profit organizations. It does not apply to colleges and universities which are covered by Office of Management and Budget (OMB) Circular A-21, "Cost Principles for Educational Institutions"; State, local, and federally-recognized Indian tribal governments which are covered by OMB Circular A-87, "Cost Principles for State, Local, and Indian Tribal Governments"; or hospitals. The principles are designed to provide that the Federal Government bear its fair share of costs except where restricted or prohibited by law. The principles do not attempt to prescribe the extent of cost sharing or matching on grants, contracts, or other agreements. However, such cost sharing or matching shall not be accomplished through arbitrary limitations on individual cost elements by Federal agencies. Provision for profit or other increment above cost is outside the scope of this Circular.

2. **Supersession.** This Circular supersedes cost principles issued by individual agencies for non-profit organizations.

3. **Applicability.**

a. These principles shall be used by all Federal agencies in determining the costs of work performed by non-profit organizations under grants, cooperative agreements, cost reimbursement contracts, and other contracts in which costs are used in pricing, administration, or settlement. All of these instruments are hereafter referred to as awards. The principles do not apply to awards under which an organization is not required to account to the Federal Government for actual costs incurred.

b. All cost reimbursement subawards (subgrants, subcontracts, etc.) are subject to those Federal cost principles applicable to the particular organization concerned. Thus, if a subaward is to a non-profit organization, this Circular shall apply; if a subaward is to a commercial organization, the cost principles applicable to commercial concerns shall apply; if a subaward is to a college or university, Circular A-21 shall apply; if a subaward is to a State, local, or federally-recognized Indian tribal government, Circular A-87 shall apply.

4. **Definitions.**

a. **Non-profit organization** means any corporation, trust, association, cooperative, or other organization which:

(1) is operated primarily for scientific, educational, service, charitable, or similar purposes in the public interest;

(2) is not organized primarily for profit; and

(3) uses its net proceeds to maintain, improve, and/or expand its operations. For this purpose, the term "non-profit organization" excludes (i) colleges and universities; (ii) hospitals; (iii) State, local, and federally-recognized Indian tribal governments; and (iv) those non-profit organizations which are excluded from coverage of this Circular in accordance with paragraph 5.

b. **Prior approval** means securing the awarding agency's permission in advance to incur cost for those items that are designated as requiring prior approval by the Circular. Generally this permission will be in writing. Where an item of cost requiring prior approval is specified in the budget of an award, approval of the budget constitutes approval of that cost.

5. **Exclusion of some non-profit organizations.** Some non-profit organizations, because of their size and nature of operations, can be considered to be similar to commercial concerns for purpose of applicability of cost principles. Such non-profit organizations shall operate under Federal cost principles applicable to commercial concerns. A listing of these organizations is contained in Attachment C. Other organizations may be added from time to time.

6. **Responsibilities.** Agencies responsible for administering programs that involve awards to non-profit organizations shall implement the provisions of this Circular. Upon request, implementing instruction shall be furnished to OMB. Agencies shall designate a liaison official to serve as the agency representative on matters relating to the implementation of this Circular. The name and title of such representative shall be furnished to OMB within 30 days of the date of this Circular.

7. **Attachments.** The principles and related policy guides are set forth in the following Attachments:

Attachment A - General Principles

Attachment B - Selected Items of Cost

Attachment C - Non-Profit Organizations Not Subject To This Circular

8. **Requests for exceptions.** OMB may grant exceptions to the requirements of this Circular when permissible under existing law. However, in the interest of achieving maximum uniformity, exceptions will be permitted only in highly unusual circumstances.

9. **Effective Date.** The provisions of this Circular are effective immediately. Implementation shall be phased in by incorporating the provisions into new awards made after the start of the organization's next fiscal year. For existing awards, the new principles may be applied if an organization and the cognizant Federal agency agree. Earlier implementation, or a delay in implementation of individual provisions, is also permitted by mutual agreement between an organization and the cognizant Federal agency.

10. **Inquiries.** Further information concerning this Circular may be obtained by contacting the Office of Federal Financial Management, OMB, Washington, DC 20503, telephone (202) 395-3993.

Attachments

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ATTACHMENT A  
Circular No. A-122

## GENERAL PRINCIPLES Table of Contents

### A. Basic Considerations

1. Composition of total costs
2. Factors affecting allowability of costs
3. Reasonable costs
4. Allocable costs
5. Applicable credits
6. Advance understandings
7. Conditional exemptions

### B. Direct Costs

### C. Indirect Costs

### D. Allocation of Indirect Costs and Determination of Indirect Cost Rates

1. General
2. Simplified allocation method

3. Multiple allocation base method
4. Direct allocation method
5. Special indirect cost rates

#### E. Negotiation and Approval of Indirect Cost Rates

1. Definitions
2. Negotiation and approval of rates

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### ATTACHMENT A Circular No. A-122

## GENERAL PRINCIPLES

### A. Basic Considerations

1. **Composition of total costs.** The total cost of an award is the sum of the allowable direct and allocable indirect costs less any applicable credits.

2. **Factors affecting allowability of costs.** To be allowable under an award, costs must meet the following general criteria:

- a. Be reasonable for the performance of the award and be allocable thereto under these principles.
- b. Conform to any limitations or exclusions set forth in these principles or in the award as to types or amount of cost items.
- c. Be consistent with policies and procedures that apply uniformly to both federally-financed and other activities of the organization.
- d. Be accorded consistent treatment.
- e. Be determined in accordance with generally accepted accounting principles (GAAP).
- f. Not be included as a cost or used to meet cost sharing or matching requirements of any other federally-financed program in either the current or a prior period.
- g. Be adequately documented.

3. **Reasonable costs.** A cost is reasonable if, in its nature or amount, it does not exceed that which would be incurred by a prudent person under the circumstances prevailing at the time the decision was made to incur the costs. The question of the reasonableness of specific costs must be scrutinized with particular care in connection with organizations or separate divisions thereof which receive the preponderance of their support from awards made by Federal agencies. In determining the reasonableness of a given cost, consideration shall be given to:

- a. Whether the cost is of a type generally recognized as ordinary and necessary for the operation of the organization or the performance of the award.
- b. The restraints or requirements imposed by such factors as generally accepted sound business practices, arms length bargaining, Federal and State laws and regulations, and terms and conditions of the award.

c. Whether the individuals concerned acted with prudence in the circumstances, considering their responsibilities to the organization, its members, employees, and clients, the public at large, and the Federal Government.

d. Significant deviations from the established practices of the organization which may unjustifiably increase the award costs.

#### **4. Allocable costs.**

a. A cost is allocable to a particular cost objective, such as a grant, contract, project, service, or other activity, in accordance with the relative benefits received. A cost is allocable to a Federal award if it is treated consistently with other costs incurred for the same purpose in like circumstances and if it:

(1) Is incurred specifically for the award.

(2) Benefits both the award and other work and can be distributed in reasonable proportion to the benefits received, or

(3) Is necessary to the overall operation of the organization, although a direct relationship to any particular cost objective cannot be shown.

b. Any cost allocable to a particular award or other cost objective under these principles may not be shifted to other Federal awards to overcome funding deficiencies, or to avoid restrictions imposed by law or by the terms of the award.

#### **5. Applicable credits.**

a. The term applicable credits refers to those receipts, or reduction of expenditures which operate to offset or reduce expense items that are allocable to awards as direct or indirect costs. Typical examples of such transactions are: purchase discounts, rebates or allowances, recoveries or indemnities on losses, insurance refunds, and adjustments of overpayments or erroneous charges. To the extent that such credits accruing or received by the organization relate to allowable cost, they shall be credited to the Federal Government either as a cost reduction or cash refund, as appropriate.

b. In some instances, the amounts received from the Federal Government to finance organizational activities or service operations should be treated as applicable credits. Specifically, the concept of netting such credit items against related expenditures should be applied by the organization in determining the rates or amounts to be charged to Federal awards for services rendered whenever the facilities or other resources used in providing such services have been financed directly, in whole or in part, by Federal funds.

c. For rules covering program income (i.e., gross income earned from federally-supported activities) see Sec. \_\_.24 of Office of Management and Budget (OMB) Circular A-110, "Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations."

**6. Advance understandings.** Under any given award, the reasonableness and allocability of certain items of costs may be difficult to determine. This is particularly true in connection with organizations that receive a preponderance of their support from Federal agencies. In order to avoid subsequent disallowance or dispute based on unreasonableness or nonallocability, it is often desirable to seek a written agreement with the cognizant or awarding agency in advance of the incurrence of special or unusual costs. The absence of an advance agreement on any

element of cost will not, in itself, affect the reasonableness or allocability of that element.

## **7. Conditional exemptions.**

a. OMB authorizes conditional exemption from OMB administrative requirements and cost principles circulars for certain Federal programs with statutorily-authorized consolidated planning and consolidated administrative funding, that are identified by a Federal agency and approved by the head of the Executive department or establishment. A Federal agency shall consult with OMB during its consideration of whether to grant such an exemption.

b. To promote efficiency in State and local program administration, when Federal non-entitlement programs with common purposes have specific statutorily-authorized consolidated planning and consolidated administrative funding and where most of the State agency's resources come from non-Federal sources, Federal agencies may exempt these covered State-administered, non-entitlement grant programs from certain OMB grants management requirements. The exemptions would be from all but the allocability of costs provisions of OMB Circulars A-87 (Attachment A, subsection C.3), "Cost Principles for State, Local, and Indian Tribal Governments," A-21 (Section C, subpart 4), "Cost Principles for Educational Institutions," and A-122 (Attachment A, subsection A.4), "Cost Principles for Non-Profit Organizations," and from all of the administrative requirements provisions of OMB Circular A-110, "Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations," and the agencies' grants management common rule.

c. When a Federal agency provides this flexibility, as a prerequisite to a State's exercising this option, a State must adopt its own written fiscal and administrative requirements for expending and accounting for all funds, which are consistent with the provisions of OMB Circular A-87, and extend such policies to all subrecipients. These fiscal and administrative requirements must be sufficiently specific to ensure that: funds are used in compliance with all applicable Federal statutory and regulatory provisions, costs are reasonable and necessary for operating these programs, and funds are not be used for general expenses required to carry out other responsibilities of a State or its subrecipients.

## **B. Direct Costs**

1. Direct costs are those that can be identified specifically with a particular final cost objective, i.e., a particular award, project, service, or other direct activity of an organization. However, a cost may not be assigned to an award as a direct cost if any other cost incurred for the same purpose, in like circumstance, has been allocated to an award as an indirect cost. Costs identified specifically with awards are direct costs of the awards and are to be assigned directly thereto. Costs identified specifically with other final cost objectives of the organization are direct costs of those cost objectives and are not to be assigned to other awards directly or indirectly.

2. Any direct cost of a minor amount may be treated as an indirect cost for reasons of practicality where the accounting treatment for such cost is consistently applied to all final cost objectives.



3. The cost of certain activities are not allowable as charges to Federal awards (see, for example, fundraising costs in **paragraph 23 of Attachment B**). However, even though these costs are unallowable for purposes of computing charges to Federal awards, they nonetheless must be treated as direct costs for purposes of determining indirect cost rates and be allocated their share of the organization's indirect costs if they represent activities which (1) include the salaries of personnel, (2) occupy space, and (3) benefit from the organization's indirect costs.

4. The costs of activities performed primarily as a service to members, clients, or the general public when significant and necessary to the organization's mission must be treated as direct costs whether or not allowable and be allocated an equitable share of indirect costs. Some examples of these types of activities include:

- a. Maintenance of membership rolls, subscriptions, publications, and related functions.
- b. Providing services and information to members, legislative or administrative bodies, or the public.
- c. Promotion, lobbying, and other forms of public relations.
- d. Meetings and conferences except those held to conduct the general administration of the organization.
- e. Maintenance, protection, and investment of special funds not used in operation of the organization.
- f. Administration of group benefits on behalf of members or clients, including life and hospital insurance, annuity or retirement plans, financial aid, etc.

### C. Indirect Costs

1. Indirect costs are those that have been incurred for common or joint objectives and cannot be readily identified with a particular final cost objective. Direct cost of minor amounts may be treated as indirect costs under the conditions described in **subparagraph B.2**. After direct costs have been determined and assigned directly to awards or other work as appropriate, indirect costs are those remaining to be allocated to benefiting cost objectives. A cost may not be allocated to an award as an indirect cost if any other cost incurred for the same purpose, in like circumstances, has been assigned to an award as a direct cost.

2. Because of the diverse characteristics and accounting practices of non-profit organizations, it is not possible to specify the types of cost which may be classified as indirect cost in all situations. However, typical examples of indirect cost for many non-profit organizations may include depreciation or use allowances on buildings and equipment, the costs of operating and maintaining facilities, and general administration and general expenses, such as the salaries and expenses of executive officers, personnel administration, and accounting.

3. Indirect costs shall be classified within two broad categories: "Facilities" and "Administration." "Facilities" is defined as depreciation and use allowances on buildings, equipment and capital improvement, interest on debt associated with certain buildings, equipment and capital improvements, and operations and maintenance expenses. "Administration" is defined as general administration and general expenses such as the director's office, accounting, personnel, library expenses and all other types of expenditures not listed specifically under one of the subcategories of "Facilities" (including cross allocations from other pools, where

applicable). See indirect cost rate reporting requirements in **subparagraphs D.2.e and D.3.g.**

## **D. Allocation of Indirect Costs and Determination of Indirect Cost Rates**

### **1. General.**

a. Where a non-profit organization has only one major function, or where all its major functions benefit from its indirect costs to approximately the same degree, the allocation of indirect costs and the computation of an indirect cost rate may be accomplished through simplified allocation procedures, as described in **subparagraph 2.**

b. Where an organization has several major functions which benefit from its indirect costs in varying degrees, allocation of indirect costs may require the accumulation of such costs into separate cost groupings which then are allocated individually to benefiting functions by means of a base which best measures the relative degree of benefit. The indirect costs allocated to each function are then distributed to individual awards and other activities included in that function by means of an indirect cost rate(s).

c. The determination of what constitutes an organization's major functions will depend on its purpose in being; the types of services it renders to the public, its clients, and its members; and the amount of effort it devotes to such activities as fundraising, public information and membership activities.

d. Specific methods for allocating indirect costs and computing indirect cost rates along with the conditions under which each method should be used are described in **subparagraphs 2 through 5.**

e. The base period for the allocation of indirect costs is the period in which such costs are incurred and accumulated for allocation to work performed in that period. The base period normally should coincide with the organization's fiscal year but, in any event, shall be so selected as to avoid inequities in the allocation of the costs.

### **2. Simplified allocation method.**

a. Where an organization's major functions benefit from its indirect costs to approximately the same degree, the allocation of indirect costs may be accomplished by (i) separating the organization's total costs for the base period as either direct or indirect, and (ii) dividing the total allowable indirect costs (net of applicable credits) by an equitable distribution base. The result of this process is an indirect cost rate which is used to distribute indirect costs to individual awards. The rate should be expressed as the percentage which the total amount of allowable indirect costs bears to the base selected. This method should also be used where an organization has only one major function encompassing a number of individual projects or activities, and may be used where the level of Federal awards to an organization is relatively small.

b. Both the direct costs and the indirect costs shall exclude capital expenditures and unallowable costs. However, unallowable costs which represent activities must be included in the direct costs under the conditions described in **subparagraph B.3.**

c. The distribution base may be total direct costs (excluding capital expenditures and other distorting items, such as major subcontracts or subgrants), direct salaries and wages, or other base which results in an equitable distribution. The distribution base shall generally exclude participant support costs as defined in **paragraph 34 of Attachment B.**

d. Except where a special rate(s) is required in accordance with **subparagraph 5**, the indirect cost rate developed under the above principles is applicable to all awards at the organization. If a special rate(s) is required, appropriate modifications shall be made in order to develop the special rate(s).

e. For an organization that receives more than \$10 million in Federal funding of direct costs in a fiscal year, a breakout of the indirect cost component into two broad categories, Facilities and Administration as defined in **subparagraph C.3**, is required. The rate in each case shall be stated as the percentage which the amount of the particular indirect cost category (i.e., Facilities or Administration) is of the distribution base identified with that category.

### 3. Multiple allocation base method

a. General. Where an organization's indirect costs benefit its major functions in varying degrees, indirect costs shall be accumulated into separate cost groupings, as described in **subparagraph b**. Each grouping shall then be allocated individually to benefitting functions by means of a base which best measures the relative benefits. The default allocation bases by cost pool are described in **subparagraph c**.

b. Identification of indirect costs. Cost groupings shall be established so as to permit the allocation of each grouping on the basis of benefits provided to the major functions. Each grouping shall constitute a pool of expenses that are of like character in terms of functions they benefit and in terms of the allocation base which best measures the relative benefits provided to each function. The groupings are classified within the two broad categories: "Facilities" and "Administration," as described in **subparagraph C.3**. The indirect cost pools are defined as follows:

(1) Depreciation and use allowances. The expenses under this heading are the portion of the costs of the organization's buildings, capital improvements to land and buildings, and equipment which are computed in accordance with **paragraph 11 of Attachment B** ("Depreciation and use allowances").

(2) Interest. Interest on debt associated with certain buildings, equipment and capital improvements are computed in accordance with **paragraph 23 of Attachment B** ("Interest, fundraising, and investment management costs").

(3) Operation and maintenance expenses. The expenses under this heading are those that have been incurred for the administration, operation, maintenance, preservation, and protection of the organization's physical plant. They include expenses normally incurred for such items as: janitorial and utility services; repairs and ordinary or normal alterations of buildings, furniture and equipment; care of grounds; maintenance and operation of buildings and other plant facilities; security; earthquake and disaster preparedness; environmental safety; hazardous waste disposal; property, liability and other insurance relating to property; space and capital leasing; facility planning and management; and, central receiving. The operation and maintenance expenses category shall also include its allocable share of fringe benefit costs, depreciation and use allowances, and interest costs.

(4) General administration and general expenses. The expenses under this heading are those that have been incurred for the overall general executive and administrative offices of the organization and other expenses of a general nature which do not relate solely to any major function of the organization. This category shall also include its allocable share of fringe benefit costs, operation and maintenance expense, depreciation and use allowances, and interest costs. Examples of this category include central offices, such as the director's office, the office of finance, business services, budget and planning, personnel, safety and risk management, general counsel, management information systems, and library costs.

In developing this cost pool, special care should be exercised to ensure that costs incurred for the same purpose in like circumstances are treated consistently as either direct or indirect costs. For example, salaries of technical staff, project supplies, project publication, telephone toll charges, computer costs, travel costs, and specialized services costs shall be treated as direct costs wherever identifiable to a particular program. The salaries and wages of administrative and pooled clerical staff should normally be treated as indirect costs. Direct charging of these costs may be appropriate where a major project or activity explicitly requires and budgets for administrative or clerical services and other individuals involved can be identified with the program or activity. Items such as office supplies, postage, local telephone costs, periodicals and memberships should normally be treated as indirect costs.

c. Allocation bases. Actual conditions shall be taken into account in selecting the base to be used in allocating the expenses in each grouping to benefitting functions. The essential consideration in selecting a method or a base is that it is the one best suited for assigning the pool of costs to cost objectives in accordance with benefits derived; a traceable cause and effect relationship; or logic and reason, where neither the cause nor the effect of the relationship is determinable. When an allocation can be made by assignment of a cost grouping directly to the function benefited, the allocation shall be made in that manner. When the expenses in a cost grouping are more general in nature, the allocation shall be made through the use of a selected base which produces results that are equitable to both the Federal Government and the organization. The distribution shall be made in accordance with the bases described herein unless it can be demonstrated that the use of a different base would result in a more equitable allocation of the costs, or that a more readily available base would not increase the costs charged to sponsored awards. The results of special cost studies (such as an engineering utility study) shall not be used to determine and allocate the indirect costs to sponsored awards.

(1) Depreciation and use allowances. Depreciation and use allowances expenses shall be allocated in the following manner:

(a) Depreciation or use allowances on buildings used exclusively in the conduct of a single function, and on capital improvements and equipment used in such buildings, shall be assigned to that function.

(b) Depreciation or use allowances on buildings used for more than one function, and on capital improvements and equipment used in such buildings, shall be allocated to the individual functions performed in each building on the basis of usable square feet of space, excluding common areas, such as hallways, stairwells, and restrooms.

(c) Depreciation or use allowances on buildings, capital improvements and equipment related space (e.g., individual rooms, and laboratories) used jointly by more than one function (as

determined by the users of the space) shall be treated as follows. The cost of each jointly used unit of space shall be allocated to the benefitting functions on the basis of:

(i) the employees and other users on a full-time equivalent (FTE) basis or salaries and wages of those individual functions benefitting from the use of that space; or

(ii) organization-wide employee FTEs or salaries and wages applicable to the benefitting functions of the organization.

(d) Depreciation or use allowances on certain capital improvements to land, such as paved parking areas, fences, sidewalks, and the like, not included in the cost of buildings, shall be allocated to user categories on a FTE basis and distributed to major functions in proportion to the salaries and wages of all employees applicable to the functions.

(2) Interest. Interest costs shall be allocated in the same manner as the depreciation or use allowances on the buildings, equipment and capital equipments to which the interest relates.

(3) Operation and maintenance expenses. Operation and maintenance expenses shall be allocated in the same manner as the depreciation and use allowances.

(4) General administration and general expenses. General administration and general expenses shall be allocated to benefitting functions based on modified total direct costs (MTDC), as described in **subparagraph D.3.f**. The expenses included in this category could be grouped first according to major functions of the organization to which they render services or provide benefits. The aggregate expenses of each group shall then be allocated to benefitting functions based on MTDC.

d. Order of distribution.

(1) Indirect cost categories consisting of depreciation and use allowances, interest, operation and maintenance, and general administration and general expenses shall be allocated in that order to the remaining indirect cost categories as well as to the major functions of the organization. Other cost categories could be allocated in the order determined to be most appropriate by the organization. When cross allocation of costs is made as provided in **subparagraph (2)**, this order of allocation does not apply.

(2) Normally, an indirect cost category will be considered closed once it has been allocated to other cost objectives, and costs shall not be subsequently allocated to it. However, a cross allocation of costs between two or more indirect costs categories could be used if such allocation will result in a more equitable allocation of costs. If a cross allocation is used, an appropriate modification to the composition of the indirect cost categories is required.

e. Application of indirect cost rate or rates. Except where a special indirect cost rate(s) is required in accordance with **subparagraph D.5**, the separate groupings of indirect costs allocated to each major function shall be aggregated and treated as a common pool for that function. The costs in the common pool shall then be distributed to individual awards included in that function by use of a single indirect cost rate.

f. Distribution basis. Indirect costs shall be distributed to applicable sponsored awards and other benefitting activities within each major function on the basis of MTDC. MTDC consists of all salaries and wages, fringe benefits, materials and supplies, services, travel, and subgrants and subcontracts up to the first \$25,000 of each subgrant or subcontract (regardless of the period covered by the subgrant or subcontract). Equipment, capital expenditures, charges for patient care, rental costs and the portion in excess of \$25,000 shall be excluded from MTDC. Participant support costs shall generally be excluded from MTDC. Other items may only be excluded when the Federal cost cognizant agency determines that an exclusion is necessary to avoid a serious inequity in the distribution of indirect costs.

g. Individual Rate Components. An indirect cost rate shall be determined for each separate indirect cost pool developed. The rate in each case shall be stated as the percentage which the amount of the particular indirect cost pool is of the distribution base identified with that pool. Each indirect cost rate negotiation or determination agreement shall include development of the rate for each indirect cost pool as well as the overall indirect cost rate. The indirect cost pools shall be classified within two broad categories: "Facilities" and "Administration," as described in **subparagraph C.3**.

#### **4. Direct allocation method.**

a. Some non-profit organizations treat all costs as direct costs except general administration and general expenses. These organizations generally separate their costs into three basic categories: (i) General administration and general expenses, (ii) fundraising, and (iii) other direct functions (including projects performed under Federal awards). Joint costs, such as depreciation, rental costs, operation and maintenance of facilities, telephone expenses, and the like are prorated individually as direct costs to each category and to each award or other activity using a base most appropriate to the particular cost being prorated.

b. This method is acceptable, provided each joint cost is prorated using a base which accurately measures the benefits provided to each award or other activity. The bases must be established in accordance with reasonable criteria, and be supported by current data. This method is compatible with the Standards of Accounting and Financial Reporting for Voluntary Health and Welfare Organizations issued jointly by the National Health Council, Inc., the National Assembly of Voluntary Health and Social Welfare Organizations, and the United Way of America.

c. Under this method, indirect costs consist exclusively of general administration and general expenses. In all other respects, the organization's indirect cost rates shall be computed in the same manner as that described in **subparagraph 2**.

**5. Special indirect cost rates.** In some instances, a single indirect cost rate for all activities of an organization or for each major function of the organization may not be appropriate, since it would not take into account those different factors which may substantially affect the indirect costs applicable to a particular segment of work. For this purpose, a particular segment of work may be that performed under a single award or it may consist of work under a group of awards performed in a common environment. These factors may include the physical location of the work, the level of administrative support required, the nature of the facilities or other resources employed, the scientific disciplines or technical skills involved, the organizational arrangements used, or any combination thereof. When a particular segment of work is performed in an environment which appears to generate a significantly different level of indirect costs, provisions

should be made for a separate indirect cost pool applicable to such work. The separate indirect cost pool should be developed during the course of the regular allocation process, and the separate indirect cost rate resulting therefrom should be used, provided it is determined that (i) the rate differs significantly from that which would have been obtained under **subparagraphs 2, 3, and 4**, and (ii) the volume of work to which the rate would apply is material.

## **E. Negotiation and Approval of Indirect Cost Rates**

1. **Definitions.** As used in this section, the following terms have the meanings set forth below:

- a. **Cognizant agency** means the Federal agency responsible for negotiating and approving indirect cost rates for a non-profit organization on behalf of all Federal agencies.
- b. **Predetermined rate** means an indirect cost rate, applicable to a specified current or future period, usually the organization's fiscal year. The rate is based on an estimate of the costs to be incurred during the period. A predetermined rate is not subject to adjustment.
- c. **Fixed rate** means an indirect cost rate which has the same characteristics as a predetermined rate, except that the difference between the estimated costs and the actual costs of the period covered by the rate is carried forward as an adjustment to the rate computation of a subsequent period.
- d. **Final rate** means an indirect cost rate applicable to a specified past period which is based on the actual costs of the period. A final rate is not subject to adjustment.
- e. **Provisional rate** or billing rate means a temporary indirect cost rate applicable to a specified period which is used for funding, interim reimbursement, and reporting indirect costs on awards pending the establishment of a final rate for the period.
- f. **Indirect cost proposal** means the documentation prepared by an organization to substantiate its claim for the reimbursement of indirect costs. This proposal provides the basis for the review and negotiation leading to the establishment of an organization's indirect cost rate.
- g. **Cost objective** means a function, organizational subdivision, contract, grant, or other work unit for which cost data are desired and for which provision is made to accumulate and measure the cost of processes, projects, jobs and capitalized projects.

## **2. Negotiation and approval of rates.**

- a. Unless different arrangements are agreed to by the agencies concerned, the Federal agency with the largest dollar value of awards with an organization will be designated as the cognizant agency for the negotiation and approval of the indirect cost rates and, where necessary, other rates such as fringe benefit and computer charge-out rates. Once an agency is assigned cognizance for a particular non-profit organization, the assignment will not be changed unless there is a major long-term shift in the dollar volume of the Federal awards to the organization. All concerned Federal agencies shall be given the opportunity to participate in the negotiation process but, after a rate has been agreed upon, it will be accepted by all Federal agencies. When a Federal agency has reason to believe that special operating factors affecting its awards necessitate special indirect cost rates in accordance with **subparagraph D.5**, it will, prior to the time the rates are negotiated, notify the cognizant agency.
- b. A non-profit organization which has not previously established an indirect cost rate with a Federal agency shall submit its initial indirect cost proposal immediately after the organization is

advised that an award will be made and, in no event, later than three months after the effective date of the award.

c. Organizations that have previously established indirect cost rates must submit a new indirect cost proposal to the cognizant agency within six months after the close of each fiscal year.

d. A predetermined rate may be negotiated for use on awards where there is reasonable assurance, based on past experience and reliable projection of the organization's costs, that the rate is not likely to exceed a rate based on the organization's actual costs.

e. Fixed rates may be negotiated where predetermined rates are not considered appropriate. A fixed rate, however, shall not be negotiated if (i) all or a substantial portion of the organization's awards are expected to expire before the carry-forward adjustment can be made; (ii) the mix of Federal and non-Federal work at the organization is too erratic to permit an equitable carry-forward adjustment; or (iii) the organization's operations fluctuate significantly from year to year.

f. Provisional and final rates shall be negotiated where neither predetermined nor fixed rates are appropriate.

g. The results of each negotiation shall be formalized in a written agreement between the cognizant agency and the non-profit organization. The cognizant agency shall distribute copies of the agreement to all concerned Federal agencies.

h. If a dispute arises in a negotiation of an indirect cost rate between the cognizant agency and the non-profit organization, the dispute shall be resolved in accordance with the appeals procedures of the cognizant agency.

i. To the extent that problems are encountered among the Federal agencies in connection with the negotiation and approval process, OMB will lend assistance as required to resolve such problems in a timely manner.

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ATTACHMENT B  
Circular No. A-122

SELECTED ITEMS OF COST  
Table of Contents

1. Advertising and public relations costs
2. Alcoholic beverages
3. Bad debts
4. Bid and proposal costs (reserved)
5. Bonding costs
6. Communication costs
7. Compensation for personal services
8. Contingency provisions
9. Contributions
10. Defense and prosecution of criminal and civil proceedings, claims, appeals and patent infringement
11. Depreciation and use allowances
12. Donations
13. Employee morale, health, and welfare costs and credits
14. Entertainment costs
15. Equipment and other capital expenditures
16. Fines and penalties



17. Fringe benefits
18. Goods or services for personal use
19. Housing and personal living expenses
20. Idle facilities and idle capacity
21. Independent research and development (reserved)
22. Insurance and indemnification
23. Interest, fund raising, and investment management costs
24. Labor relations costs
25. Lobbying
26. Losses on other awards
27. Maintenance and repair costs
28. Materials and supplies
29. Meetings and conferences
30. Memberships, subscriptions, and professional activity costs
31. Organization costs
32. Overtime, extra-pay shift, and multi-shift premiums
33. Page charges in professional journals
34. Participant support costs
35. Patent costs
36. Pension plans
37. Plant security costs
38. Pre-award costs
39. Professional service costs
40. Profits and losses on disposition of depreciable property or other capital assets
41. Publication and printing costs
42. Rearrangement and alteration costs
43. Reconversion costs
44. Recruiting costs
45. Relocation costs
46. Rental costs
47. Royalties and other costs for use of patents and copyrights
48. Selling and marketing
49. Severance pay
50. Specialized service facilities
51. Taxes
52. Termination costs
53. Training and education costs
54. Transportation costs
55. Travel costs
56. Trustees

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ATTACHMENT B  
Circular No. A-122

#### SELECTED ITEMS OF COST

**Paragraphs 1 through 56** provide principles to be applied in establishing the allowability of certain items of cost. These principles apply whether a cost is treated as direct or indirect.

Failure to mention a particular item of cost is not intended to imply that it is unallowable; rather, determination as to allowability in each case should be based on the treatment or principles provided for similar or related items of cost.

**1. Advertising and public relations costs.**

a. The term advertising costs means the costs of advertising media and corollary administrative costs. Advertising media include magazines, newspapers, radio and television programs, direct mail, exhibits, and the like.

b. The term public relations includes community relations and means those activities dedicated to maintaining the image of the organization or maintaining or promoting understanding and favorable relations with the community or public at large or any segment of the public.

c. The only allowable advertising costs are those which are solely for:

(1) The recruitment of personnel required for the performance by the organization of obligations arising under a sponsored award, when considered in conjunction with all other recruitment costs, as set forth in **paragraph 44** ("Recruiting costs");

(2) The procurement of goods and services for the performance of a sponsored award;

(3) The disposal of scrap or surplus materials acquired in the performance of a sponsored award except when organizations are reimbursed for disposal costs at a predetermined amount in accordance with OMB Circular A-110, Sec. \_\_\_\_\_.34, "Equipment"; or

(4) Other specific purposes necessary to meet the requirements of the sponsored award.

d. The only allowable public relations costs are:

(1) Costs specifically required by sponsored awards;

(2) Costs of communicating with the public and press pertaining to specific activities or accomplishments which result from performance of sponsored awards (these costs are considered necessary as part of the outreach effort for the sponsored awards); or

(3) Costs of conducting general liaison with news media and government public relations officers, to the extent that such activities are limited to communication and liaison necessary to keep the public informed on matters of public concern, such as notices of contract/grant awards, financial matters, etc.

e. Costs identified in **subparagraphs c and d** if incurred for more than one sponsored award or for both sponsored work and other work of the organization, are allowable to the extent that the principles in **paragraphs B** ("Direct Costs") and **C** ("Indirect Costs") of **Attachment A** are observed.

f. Unallowable advertising and public relations costs include the following:

(1) All advertising and public relations costs other than as specified in **subparagraphs c, d, and e**;

(2) Costs of meetings or other events related to fund raising or other organizational activities including:

(i) Costs of displays, demonstrations, and exhibits;

(ii) Costs of meeting rooms, hospitality suites, and other special facilities used in conjunction with shows and other special events; and

(iii) Salaries and wages of employees or cost of services engaged in setting up and displaying exhibits, making demonstrations, and providing briefings;

(3) Costs of promotional items and memorabilia, including models, gifts, and souvenirs;

(4) Costs of advertising and public relations designed solely to promote the organization.

2. **Alcoholic beverages.** Costs of alcoholic beverages are unallowable.

3. **Bad debts.** Bad debts, including losses (whether actual or estimated) arising from uncollectible accounts and other claims, related collection costs, and related legal costs, are unallowable.

4. **Bid and proposal costs.** (reserved)

5. **Bonding costs.**

a. Bonding costs arise when the Federal Government requires assurance against financial loss to itself or others by reason of the act or default of the organization. They arise also in instances where the organization requires similar assurance. Included are such bonds as bid, performance, payment, advance payment, infringement, and fidelity bonds.

b. Costs of bonding required pursuant to the terms of the award are allowable.

c. Costs of bonding required by the organization in the general conduct of its operations are allowable to the extent that such bonding is in accordance with sound business practice and the rates and premiums are reasonable under the circumstances.

6. **Communication costs.** Costs incurred for telephone services, local and long distance telephone calls, telegrams, radiograms, postage and the like are allowable.

7. **Compensation for personal services.**

a. **Definition.** Compensation for personal services includes all compensation paid currently or accrued by the organization for services of employees rendered during the period of the award (except as otherwise provided in **subparagraph h**). It includes, but is not limited to, salaries, wages, director's and executive committee member's fees, incentive awards, fringe benefits, pension plan costs, allowances for off-site pay, incentive pay, location allowances, hardship pay, and cost of living differentials.

b. **Allowability.** Except as otherwise specifically provided in this paragraph, the costs of such compensation are allowable to the extent that:

- (1) Total compensation to individual employees is reasonable for the services rendered and conforms to the established policy of the organization consistently applied to both Federal and non-Federal activities; and
- (2) Charges to awards whether treated as direct or indirect costs are determined and supported as required in this paragraph.

c. **Reasonableness.**

(1) When the organization is predominantly engaged in activities other than those sponsored by the Federal Government, compensation for employees on federally-sponsored work will be considered reasonable to the extent that it is consistent with that paid for similar work in the organization's other activities.

(2) When the organization is predominantly engaged in federally-sponsored activities and in cases where the kind of employees required for the Federal activities are not found in the organization's other activities, compensation for employees on federally-sponsored work will be considered reasonable to the extent that it is comparable to that paid for similar work in the labor markets in which the organization competes for the kind of employees involved.

d. **Special considerations in determining allowability.** Certain conditions require special consideration and possible limitations in determining costs under Federal awards where amounts or types of compensation appear unreasonable. Among such conditions are the following:

(1) Compensation to members of non-profit organizations, trustees, directors, associates, officers, or the immediate families thereof. Determination should be made that such compensation is reasonable for the actual personal services rendered rather than a distribution of earnings in excess of costs.

(2) Any change in an organization's compensation policy resulting in a substantial increase in the organization's level of compensation, particularly when it was concurrent with an increase in the ratio of Federal awards to other activities of the organization or any change in the treatment of allowability of specific types of compensation due to changes in Federal policy.

e. **Unallowable costs.** Costs which are unallowable under other paragraphs of this Attachment shall not be allowable under this paragraph solely on the basis that they constitute personal compensation.

f. **Fringe benefits.**

(1) Fringe benefits in the form of regular compensation paid to employees during periods of authorized absences from the job, such as vacation leave, sick leave, military leave, and the like, are allowable, provided such costs are absorbed by all organization activities in proportion to the relative amount of time or effort actually devoted to each.

(2) Fringe benefits in the form of employer contributions or expenses for social security, employee insurance, workmen's compensation insurance, pension plan costs (see **subparagraph h**), and the like, are allowable, provided such benefits are granted in accordance with established written organization policies. Such benefits whether treated as indirect costs or as direct costs, shall be distributed to particular awards and other activities in a manner consistent with the pattern of benefits accruing to the individuals or group of employees whose salaries and wages are chargeable to such awards and other activities.

(3) (a) Provisions for a reserve under a self-insurance program for unemployment compensation or workers' compensation are allowable to the extent that the provisions represent reasonable estimates of the liabilities for such compensation, and the types of coverage, extent of

coverage, and rates and premiums would have been allowable had insurance been purchased to cover the risks. However, provisions for self-insured liabilities which do not become payable for more than one year after the provision is made shall not exceed the present value of the liability.

(b) Where an organization follows a consistent policy of expensing actual payments to, or on behalf of, employees or former employees for unemployment compensation or workers' compensation, such payments are allowable in the year of payment with the prior approval of the awarding agency, provided they are allocated to all activities of the organization.

(4) Costs of insurance on the lives of trustees, officers, or other employees holding positions of similar responsibility are allowable only to the extent that the insurance represents additional compensation. The costs of such insurance when the organization is named as beneficiary are unallowable.

**g. Organization-furnished automobiles.** That portion of the cost of organization-furnished automobiles that relates to personal use by employees (including transportation to and from work) is unallowable as fringe benefit or indirect costs regardless of whether the cost is reported as taxable income to the employees. These costs are allowable as direct costs to sponsored award when necessary for the performance of the sponsored award and approved by awarding agencies.

**h. Pension plan costs.**

(1) Costs of the organization's pension plan which are incurred in accordance with the established policies of the organization are allowable, provided:

(a) Such policies meet the test of reasonableness;

(b) The methods of cost allocation are not discriminatory;

(c) The cost assigned to each fiscal year is determined in accordance with generally accepted accounting principles (GAAP), as prescribed in Accounting Principles Board Opinion No. 8 issued by the American Institute of Certified Public Accountants; and

(d) The costs assigned to a given fiscal year are funded for all plan participants within six months after the end of that year. However, increases to normal and past service pension costs caused by a delay in funding the actuarial liability beyond 30 days after each quarter of the year to which such costs are assignable are unallowable.

(2) Pension plan termination insurance premiums paid pursuant to the Employee Retirement Income Security Act (ERISA) of 1974 (Pub. L. 93-406) are allowable. Late payment charges on such premiums are unallowable.

(3) Excise taxes on accumulated funding deficiencies and other penalties imposed under ERISA are unallowable.

**i. Incentive compensation.** Incentive compensation to employees based on cost reduction, or efficient performance, suggestion awards, safety awards, etc., are allowable to the extent that the overall compensation is determined to be reasonable and such costs are paid or accrued pursuant to an agreement entered into in good faith between the organization and the employees before the services were rendered, or pursuant to an established plan followed by the organization so consistently as to imply, in effect, an agreement to make such payment.

**j. Overtime, extra-pay shift, and multi-shift premiums.** See paragraph 32.

**k. Severance pay.** See paragraph 49.

**l. Training and education costs.** See paragraph 53.

**m. Support of salaries and wages.**

(1) Charges to awards for salaries and wages, whether treated as direct costs or indirect costs, will be based on documented payrolls approved by a responsible official(s) of the organization. The distribution of salaries and wages to awards must be supported by personnel activity reports, as prescribed in **subparagraph (2)**, except when a substitute system has been approved in writing by the cognizant agency. (See **subparagraph E.2 of Attachment A.**)

(2) Reports reflecting the distribution of activity of each employee must be maintained for all staff members (professionals and nonprofessionals) whose compensation is charged, in whole or in part, directly to awards. In addition, in order to support the allocation of indirect costs, such reports must also be maintained for other employees whose work involves two or more functions or activities if a distribution of their compensation between such functions or activities is needed in the determination of the organization's indirect cost rate(s) (e.g., an employee engaged part-time in indirect cost activities and part-time in a direct function). Reports maintained by non-profit organizations to satisfy these requirements must meet the following standards:

(a) The reports must reflect an *after-the-fact* determination of the actual activity of each employee. Budget estimates (i.e., estimates determined before the services are performed) do not qualify as support for charges to awards.

(b) Each report must account for the total activity for which employees are compensated and which is required in fulfillment of their obligations to the organization.

(c) The reports must be signed by the individual employee, or by a responsible supervisory official having first hand knowledge of the activities performed by the employee, that the distribution of activity represents a reasonable estimate of the actual work performed by the employee during the periods covered by the reports.

(d) The reports must be prepared at least monthly and must coincide with one or more pay periods.

(3) Charges for the salaries and wages of nonprofessional employees, in addition to the supporting documentation described in **subparagraphs (1) and (2)**, must also be supported by records indicating the total number of hours worked each day maintained in conformance with Department of Labor regulations implementing the Fair Labor Standards Act (FLSA) (29 CFR Part 516). For this purpose, the term "nonprofessional employee" shall have the same meaning as "nonexempt employee," under FLSA.

(4) Salaries and wages of employees used in meeting cost sharing or matching requirements on awards must be supported in the same manner as salaries and wages claimed for reimbursement from awarding agencies.

**8. Contingency provisions.** Contributions to a contingency reserve or any similar provision made for events the occurrence of which cannot be foretold with certainty as to time, intensity, or with an assurance of their happening, are unallowable. The term "contingency reserve" excludes self-insurance reserves (see **subparagraphs 7.f (3) and 22.a(2)(d)**); pension funds (see **subparagraph 7.h**); and reserves for normal severance pay (see **subparagraph 49.b(1)**).

**9. Contributions.** Contributions and donations by the organization to others are unallowable.

**10. Defense and prosecution of criminal and civil proceedings, claims, appeals and patent infringement.**

**a. Definitions.**

(1) Conviction, as used herein, means a judgment or a conviction of a criminal offense by any court of competent jurisdiction, whether entered upon as a verdict or a plea, including a conviction due to a plea of *nolo contendere*.

(2) Costs include, but are not limited to, administrative and clerical expenses; the cost of legal services, whether performed by in-house or private counsel; and the costs of the services of accountants, consultants, or others retained by the organization to assist it; costs of employees, officers and trustees, and any similar costs incurred before, during, and after commencement of a judicial or administrative proceeding that bears a direct relationship to the proceedings.

(3) Fraud, as used herein, means (i) acts of fraud corruption or attempts to defraud the Federal Government or to corrupt its agents, (ii) acts that constitute a cause for debarment or suspension (as specified in agency regulations), and (iii) acts which violate the False Claims Act, 31 U.S.C., sections 3729-3731, or the Anti-Kickback Act, 41 U.S.C., sections 51 and 54.

(4) Penalty does not include restitution, reimbursement, or compensatory damages.

(5) Proceeding includes an investigation.

b. (1) Except as otherwise described herein, costs incurred in connection with any criminal, civil or administrative proceeding (including filing of a false certification) commenced by the Federal Government, or a State, local or foreign government, are not allowable if the proceeding: (1) relates to a violation of, or failure to comply with, a Federal, State, local or foreign statute or regulation by the organization (including its agents and employees), and (2) results in any of the following dispositions:

(a) In a criminal proceeding, a conviction.

(b) In a civil or administrative proceeding involving an allegation of fraud or similar misconduct, a determination of organizational liability.

(c) In the case of any civil or administrative proceeding, the imposition of a monetary penalty.

(d) A final decision by an appropriate Federal official to debar or suspend the organization, to rescind or void an award, or to terminate an award for default by reason of a violation or failure to comply with a law or regulation.

(e) A disposition by consent or compromise, if the action could have resulted in any of the dispositions described in (a), (b), (c) or (d).

(2) If more than one proceeding involves the same alleged misconduct, the costs of all such proceedings shall be unallowable if any one of them results in one of the dispositions shown in **subparagraph b.(1)**.

c. If a proceeding referred to in **subparagraph b** is commenced by the Federal Government and is resolved by consent or compromise pursuant to an agreement entered into by the organization and the Federal Government, then the costs incurred by the organization in connection with such proceedings that are otherwise not allowable under **subparagraph b** may

be allowed to the extent specifically provided in such agreement.

d. If a proceeding referred to in **subparagraph b** is commenced by a State, local or foreign government, the authorized Federal official may allow the costs incurred by the organization for such proceedings, if such authorized official determines that the costs were incurred as a result of (1) a specific term or condition of a federally-sponsored award, or (2) specific written direction of an authorized official of the sponsoring agency.

e. Costs incurred in connection with proceedings described in **subparagraph b**, but which are not made unallowable by that subparagraph, may be allowed by the Federal Government, but only to the extent that:

(1) The costs are reasonable in relation to the activities required to deal with the proceeding and the underlying cause of action;

(2) Payment of the costs incurred, as allowable and allocable costs, is not prohibited by any other provision(s) of the sponsored award;

(3) The costs are not otherwise recovered from the Federal Government or a third party, either directly as a result of the proceeding or otherwise; and,

(4) The percentage of costs allowed does not exceed the percentage determined by an authorized Federal official to be appropriate, considering the complexity of the litigation, generally accepted principles governing the award of legal fees in civil actions involving the United States as a party, and such other factors as may be appropriate. Such percentage shall not exceed 80 percent. However, if an agreement reached under **subparagraph c** has explicitly considered this 80 percent limitation and permitted a higher percentage, then the full amount of costs resulting from that agreement shall be allowable.

f. Costs incurred by the organization in connection with the defense of suits brought by its employees or ex-employees under section 2 of the Major Fraud Act of 1988 (Pub. L. 100-700), including the cost of all relief necessary to make such employee whole, where the organization was found liable or settled, are unallowable.

g. Costs of legal, accounting, and consultant services, and related costs, incurred in connection with defense against Federal Government claims or appeals, antitrust suits, or the prosecution of claims or appeals against the Federal Government, are unallowable.

h. Costs of legal, accounting, and consultant services, and related costs, incurred in connection with patent infringement litigation, are unallowable unless otherwise provided for in the sponsored awards.

i. Costs which may be unallowable under this paragraph, including directly associated costs, shall be segregated and accounted for by the organization separately. During the pendency of any proceeding covered by **subparagraphs b and f**, the Federal Government shall generally withhold payment of such costs. However, if in the best interests of the Federal Government, the Federal Government may provide for conditional payment upon provision of adequate security, or other adequate assurance, and agreements by the organization to repay all



unallowable costs, plus interest, if the costs are subsequently determined to be unallowable.

#### 11. Depreciation and use allowances.

a. Compensation for the use of buildings, other capital improvements, and equipment on hand may be made through use allowances or depreciation. However, except as provided in **subparagraph f**, a combination of the two methods may not be used in connection with a single class of fixed assets (e.g., buildings, office equipment, computer equipment, etc.).

b. The computation of use allowances or depreciation shall be based on the acquisition cost of the assets involved. The acquisition cost of an asset donated to the organization by a third party shall be its fair market value at the time of the donation.

c. The computation of use allowances or depreciation will exclude:

(1) The cost of land;

(2) Any portion of the cost of buildings and equipment borne by or donated by the Federal Government irrespective of where title was originally vested or where it presently resides; and

(3) Any portion of the cost of buildings and equipment contributed by or for the organization in satisfaction of a statutory matching requirement.

d. Where the use allowance method is followed, the use allowance for buildings and improvement (including land improvements, such as paved parking areas, fences, and sidewalks) will be computed at an annual rate not exceeding two percent of acquisition cost. The use allowance for equipment will be computed at an annual rate not exceeding six and two-thirds percent of acquisition cost. When the use allowance method is used for buildings, the entire building must be treated as a single asset; the building's components (e.g., plumbing system, heating and air conditioning, etc.) cannot be segregated from the building's shell. The two percent limitation, however, need not be applied to equipment which is merely attached or fastened to the building but not permanently fixed to it and which is used as furnishings or decorations or for specialized purposes (e.g., dentist chairs and dental treatment units, counters, laboratory benches bolted to the floor, dishwashers, carpeting, etc.). Such equipment will be considered as not being permanently fixed to the building if it can be removed without the need for costly or extensive alterations or repairs to the building or the equipment. Equipment that meets these criteria will be subject to the six and two-thirds percent equipment use allowance limitation.

e. Where depreciation method is followed, the period of useful service (useful life) established in each case for usable capital assets must take into consideration such factors as type of construction, nature of the equipment used, technological developments in the particular program area, and the renewal and replacement policies followed for the individual items or classes of assets involved. The method of depreciation used to assign the cost of an asset (or group of assets) to accounting periods shall reflect the pattern of consumption of the asset during its useful life. In the absence of clear evidence indicating that the expected consumption of the asset will be significantly greater or lesser in the early portions of its useful life than in the later portions, the straight-line method shall be presumed to be the appropriate method.

Depreciation methods once used shall not be changed unless approved in advance by the cognizant Federal agency. When the depreciation method is introduced for application to assets previously subject to a use allowance, the combination of use allowances and depreciation applicable to such assets must not exceed the total acquisition cost of the assets. When the depreciation method is used for buildings, a building's shell may be segregated from each building component (e.g., plumbing system, heating, and air conditioning system, etc.) and each

item depreciated over its estimated useful life; or the entire building (i.e., the shell and all components) may be treated as a single asset and depreciated over a single useful life.

f. When the depreciation method is used for a particular class of assets, no depreciation may be allowed on any such assets that, under **subparagraph e**, would be viewed as fully depreciated. However, a reasonable use allowance may be negotiated for such assets if warranted after taking into consideration the amount of depreciation previously charged to the Federal Government, the estimated useful life remaining at time of negotiation, the effect of any increased maintenance charges or decreased efficiency due to age, and any other factors pertinent to the utilization of the asset for the purpose contemplated.

g. Charges for use allowances or depreciation must be supported by adequate property records and physical inventories must be taken at least once every two years (a statistical sampling basis is acceptable) to ensure that assets exist and are usable and needed. When the depreciation method is followed, adequate depreciation records indicating the amount of depreciation taken each period must also be maintained.

## 12. Donations.

### a. Services received.

(1) Donated or volunteer services may be furnished to an organization by professional and technical personnel, consultants, and other skilled and unskilled labor. The value of these services is not reimbursable either as a direct or indirect cost.

(2) The value of donated services utilized in the performance of a direct cost activity shall be considered in the determination of the organization's indirect cost rate(s) and, accordingly, shall be allocated a proportionate share of applicable indirect costs when the following circumstances exist:

(a) The aggregate value of the services is material;

(b) The services are supported by a significant amount of the indirect costs incurred by the organization;

(c) The direct cost activity is not pursued primarily for the benefit of the Federal Government,

(3) In those instances where there is no basis for determining the fair market value of the services rendered, the recipient and the cognizant agency shall negotiate an appropriate allocation of indirect cost to the services.

(4) Where donated services directly benefit a project supported by an award, the indirect costs allocated to the services will be considered as a part of the total costs of the project. Such indirect costs may be reimbursed under the award or used to meet cost sharing or matching requirements.

(5) The value of the donated services may be used to meet cost sharing or matching requirements under conditions described in Sec. \_\_.23 of Circular A-110. Where donated services are treated as indirect costs, indirect cost rates will separate the value of the donations so that reimbursement will not be made.

(6) Fair market value of donated services shall be computed as follows:

(a) **Rates for volunteer services.** Rates for volunteers shall be consistent with those regular rates paid for similar work in other activities of the organization. In cases where the kinds of skills involved are not found in other activities of the organization, the rates used shall be consistent with those paid for similar work in the labor market in which the organization competes for such skills.

(b) **Services donated by other organizations.** When an employer donates the services of an employee, these services shall be valued at the employee's regular rate of pay (exclusive of fringe benefits and indirect costs), provided the services are in the same skill for which the employee is normally paid. If the services are not in the same skill for which the employee is normally paid, fair market value shall be computed in accordance with **subparagraph (a)**.

**b. Goods and space.**

(1) Donated goods; i.e., expendable personal property/supplies, and donated use of space may be furnished to an organization. The value of the goods and space is not reimbursable either as a direct or indirect cost.

(2) The value of the donations may be used to meet cost sharing or matching share requirements under the conditions described in Sec. \_\_.23 of Circular A-110. The value of the donations shall be determined in accordance with Sec. \_\_.23 of Circular A-110. Where donations are treated as indirect costs, indirect cost rates will separate the value of the donations so that reimbursement will not be made.

**13. Employee morale, health, and welfare costs and credits.** The costs of house publications, health or first-aid clinics, and/or infirmaries, recreational activities, employees' counseling services, and other expenses incurred in accordance with the organization's established practice or custom for the improvement of working conditions, employer-employee relations, employee morale, and employee performance are allowable. Such costs will be equitably apportioned to all activities of the organization. Income generated from any of these activities will be credited to the cost thereof unless such income has been irrevocably set over to employee welfare organizations.

**14. Entertainment costs.** Costs of amusement, diversion, social activities, ceremonials, and costs relating thereto, such as meals, lodging, rentals, transportation, and gratuities are unallowable (but see **paragraphs 13 and 30**).

**15. Equipment and other capital expenditures.**

a. As used in this paragraph, the following terms have the meanings set forth below:

(1) "Equipment" means an article of nonexpendable, tangible personal property having a useful life of more than one year and an acquisition cost which equals or exceeds the lesser of (a) the capitalization level established by the organization for the financial statement purposes, or (b) \$5000. The unamortized portion of any equipment written off as a result of a change in capitalization levels may be recovered by continuing to claim the otherwise allowable use allowances or depreciation on the equipment, or by amortizing the amount to be written off over a period of years as negotiated with the Federal cognizant agency.

(2) **Acquisition cost** means the net invoice unit price of an item of equipment, including the cost of any modifications, attachments, accessories, or auxiliary apparatus necessary to make it usable for the purpose for which it is acquired. Ancillary charges, such as taxes, duty, protective in-transit insurance, freight, and installation shall be included in or excluded from acquisition cost in accordance with the organization's regular written accounting practices.

(3) **Special purpose equipment** means equipment which is usable only for research, medical, scientific, or technical activities. Examples of special purpose equipment include microscopes, x-ray machines, surgical instruments, and spectrometers.

(4) **General purpose equipment** means equipment which is usable for other than research, medical, scientific, or technical activities, whether or not special modifications are needed to make them suitable for a particular purpose. Examples of general purpose equipment include office equipment and furnishings, air conditioning equipment, reproduction and printing equipment, motor vehicles, and automatic data processing equipment.

b. (1) Capital expenditures for general purpose equipment are unallowable as a direct cost except with the prior approval of the awarding agency.

(2) Capital expenditures for special purpose equipment are allowable as direct costs, provided that items with a unit cost of \$5000 or more have the prior approval of awarding agency.

c. Capital expenditures for land or buildings are unallowable as a direct cost except with the prior approval of the awarding agency.

d. Capital expenditures for improvements to land, buildings, or equipment which materially increase their value or useful life are unallowable as a direct cost except with the prior approval of the awarding agency.

e. Equipment and other capital expenditures are unallowable as indirect costs. However, see **paragraph 11** for allowability of use allowances or depreciation on buildings, capital improvements, and equipment. Also, see **paragraph 46** for allowability of rental costs for land, buildings, and equipment.

16. **Fines and penalties.** Costs of fines and penalties resulting from violations of, or failure of the organization to comply with Federal, State, and local laws and regulations are unallowable except when incurred as a result of compliance with specific provisions of an award or instructions in writing from the awarding agency.

17. **Fringe benefits.** See **subparagraph 7.f.**

18. **Goods or services for personal use.** Costs of goods or services for personal use of the organization's employees are unallowable regardless of whether the cost is reported as taxable income to the employees.

19. **Housing and personal living expenses.**

a. Costs of housing (e.g., depreciation, maintenance, utilities, furnishings, rent, etc.), housing allowances and personal living expenses for/of the organization's officers are unallowable as fringe benefit or indirect costs regardless of whether the cost is reported as taxable income to the employees. These costs are allowable as direct costs to sponsored award when necessary for the performance of the sponsored award and approved by awarding agencies.

b. The term "officers" includes current and past officers and employees.

20. **Idle facilities and idle capacity.**

a. As used in this paragraph, the following terms have the meanings set forth below:

(1) **Facilities** means land and buildings or any portion thereof, equipment individually or collectively, or any other tangible capital asset, wherever located, and whether owned or leased by the organization.

(2) **Idle facilities** means completely unused facilities that are excess to the organization's current needs.

(3) **Idle capacity** means the unused capacity of partially used facilities. It is the difference between that which a facility could achieve under 100 percent operating time on a one-shift basis less operating interruptions resulting from time lost for repairs, setups, unsatisfactory materials, and other normal delays, and the extent to which the facility was actually used to meet demands during the accounting period. A multi-shift basis may be used if it can be shown that this amount of usage could normally be expected for the type of facility involved.

(4) **Costs of idle facilities or idle capacity** means costs such as maintenance, repair, housing, rent, and other related costs, e.g., property taxes, insurance, and depreciation or use allowances.

b. The costs of idle facilities are unallowable except to the extent that:

(1) They are necessary to meet fluctuations in workload; or

(2) Although not necessary to meet fluctuations in workload, they were necessary when acquired and are now idle because of changes in program requirements, efforts to achieve more economical operations, reorganization, termination, or other causes which could not have been reasonably foreseen. Under the exception stated in this subparagraph, costs of idle facilities are allowable for a reasonable period of time, ordinarily not to exceed one year, depending upon the initiative taken to use, lease, or dispose of such facilities (but see **subparagraphs 48.b and d**).

c. The costs of idle capacity are normal costs of doing business and are a factor in the normal fluctuations of usage or indirect cost rates from period to period. Such costs are allowable, provided the capacity is reasonably anticipated to be necessary or was originally reasonable and is not subject to reduction or elimination by subletting, renting, or sale, in accordance with sound business, economics, or security practices. Widespread idle capacity throughout an entire facility or among a group of assets having substantially the same function may be idle facilities.

## **21. Independent research and development.** [Reserved]

## **22. Insurance and indemnification.**

a. Insurance includes insurance which the organization is required to carry, or which is approved, under the terms of the award and any other insurance which the organization maintains in connection with the general conduct of its operations. This paragraph does not apply to insurance which represents fringe benefits for employees (see **subparagraphs 7.f and 7.h(2)**).

(1) Costs of insurance required or approved, and maintained, pursuant to the award are allowable.

(2) Costs of other insurance maintained by the organization in connection with the general conduct of its operations are allowable subject to the following limitations:

(a) Types and extent of coverage shall be in accordance with sound business practice and the rates and premiums shall be reasonable under the circumstances.

(b) Costs allowed for business interruption or other similar insurance shall be limited to exclude coverage of management fees.

(c) Costs of insurance or of any provisions for a reserve covering the risk of loss or damage to Federal property are allowable only to the extent that the organization is liable for such loss or damage.

(d) Provisions for a reserve under a self-insurance program are allowable to the extent that types of coverage, extent of coverage, rates, and premiums would have been allowed had insurance been purchased to cover the risks. However, provision for known or reasonably estimated self-insured liabilities, which do not become payable for more than one year after the provision is made, shall not exceed the present value of the liability.

(e) Costs of insurance on the lives of trustees, officers, or other employees holding positions of similar responsibilities are allowable only to the extent that the insurance represents additional compensation (see **subparagraph 7.f(4)**). The cost of such insurance when the organization is identified as the beneficiary is unallowable.

(f) Insurance against defects. Costs of insurance with respect to any costs incurred to correct defects in the organization's materials or workmanship are unallowable.

(g) Medical liability (malpractice) insurance. Medical liability insurance is an allowable cost of Federal research programs only to the extent that the Federal research programs involve human subjects or training of participants in research techniques. Medical liability insurance costs shall be treated as a direct cost and shall be assigned to individual projects based on the manner in which the insurer allocates the risk to the population covered by the insurance.

(3) Actual losses which could have been covered by permissible insurance (through the purchase of insurance or a self-insurance program) are unallowable unless expressly provided for in the award, except:

(a) Costs incurred because of losses not covered under nominal deductible insurance coverage provided in keeping with sound business practice are allowable.

(b) Minor losses not covered by insurance, such as spoilage, breakage, and disappearance of supplies, which occur in the ordinary course of operations, are allowable.

b. Indemnification includes securing the organization against liabilities to third persons and any other loss or damage, not compensated by insurance or otherwise. The Federal Government is obligated to indemnify the organization only to the extent expressly provided in the award.

## **23. Interest, fundraising, and investment management costs.**

### **a. Interest.**

(1) Costs incurred for interest on borrowed capital or temporary use of endowment funds, however represented, are unallowable. However, interest on debt incurred after the effective date of this revision to acquire or replace capital assets (including renovations, alterations, equipment, land, and capital assets acquired through capital leases), acquired after the effective date of this revision and used in support of sponsored agreements is allowable, provided that:

(a) For facilities acquisitions (excluding renovations and alterations) costing over \$10 million where the Federal Government's reimbursement is expected to equal or exceed 40 percent of an asset's cost, the non-profit organization prepares, prior to the acquisition or replacement of the capital asset(s), a justification that demonstrates the need for the facility in the conduct of federally-sponsored activities. Upon request, the needs justification must be provided to the Federal agency with cost cognizance authority as a prerequisite to the continued allowability of

interest on debt and depreciation related to the facility. The needs justification for the acquisition of a facility should include, at a minimum, the following:

A statement of purpose and justification for facility acquisition or replacement

A statement as to why current facilities are not adequate

A statement of planned future use of the facility

A description of the financing agreement to be arranged for the facility

A summary of the building contract with estimated cost information and statement of source and use of funds

A schedule of planned occupancy dates

(b) For facilities costing over \$500,000, the non-profit organization prepares, prior to the acquisition or replacement of the facility, a lease/purchase analysis in accordance with the provisions of Sec. \_\_.30 through \_\_.37 of Circular A-110, which shows that a financed purchase or capital lease is less costly to the organization than other leasing alternatives, on a net present value basis. Discount rates used should be equal to the non-profit organization's anticipated interest rates and should be no higher than the fair market rate available to the non-profit organization from an unrelated ("arm's length") third-party. The lease/purchase analysis shall include a comparison of the net present value of the projected total cost comparisons of both alternatives over the period the asset is expected to be used by the non-profit organization. The cost comparisons associated with purchasing the facility shall include the estimated purchase price, anticipated operating and maintenance costs (including property taxes, if applicable) not included in the debt financing, less any estimated asset salvage value at the end of the period defined above. The cost comparison for a capital lease shall include the estimated total lease payments, any estimated bargain purchase option, operating and maintenance costs, and taxes not included in the capital leasing arrangement, less any estimated credits due under the lease at the end of the period defined above. Projected operating lease costs shall be based on the anticipated cost of leasing comparable facilities at fair market rates under rental agreements that would be renewed or reestablished over the period defined above, and any expected maintenance costs and allowable property taxes to be borne by the non-profit organization directly or as part of the lease arrangement.

(c) The actual interest cost claimed is predicated upon interest rates that are no higher than the fair market rate available to the non-profit organization from an unrelated ("arm's length") third party.

(d) Investment earnings, including interest income, on bond or loan principal, pending payment of the construction or acquisition costs, are used to offset allowable interest cost. Arbitrage earnings reportable to the Internal Revenue Service are not required to be offset against allowable interest costs.

(e) Reimbursements are limited to the least costly alternative based on the total cost analysis required under **subparagraph (b)**. For example, if an operating lease is determined to be less costly than purchasing through debt financing, then reimbursement is limited to the amount determined if leasing had been used. In all cases where a lease/purchase analysis is performed, Federal reimbursement shall be based upon the least expensive alternative.

(f) Non-profit organizations are also subject to the following conditions:

(i) Interest on debt incurred to finance or refinance assets acquired before or reacquired after the effective date of this Circular is not allowable.

(ii) For debt arrangements over \$1 million, unless the non-profit organization makes an initial equity contribution to the asset purchase of 25 percent or more, non-profit organizations shall reduce claims for interest expense by an amount equal to imputed interest earnings on excess

cash flow, which is to be calculated as follows. Annually, non-profit organizations shall prepare a cumulative (from the inception of the project) report of monthly cash flows that includes inflows and outflows, regardless of the funding source. Inflows consist of depreciation expense, amortization of capitalized construction interest, and annual interest expense. For cash flow calculations, the annual inflow figures shall be divided by the number of months in the year (usually 12) that the building is in service for monthly amounts. Outflows consist of initial equity contributions, debt principal payments (less the pro rata share attributable to the unallowable costs of land) and interest payments. Where cumulative inflows exceed cumulative outflows, interest shall be calculated on the excess inflows for that period and be treated as a reduction to allowable interest expense. The rate of interest to be used to compute earnings on excess cash flows shall be the three month Treasury Bill closing rate as of the last business day of that month.

(iii) Substantial relocation of federally-sponsored activities from a facility financed by indebtedness, the cost of which was funded in whole or part through Federal reimbursements, to another facility prior to the expiration of a period of 20 years requires notice to the Federal cognizant agency. The extent of the relocation, the amount of the Federal participation in the financing, and the depreciation and interest charged to date may require negotiation and/or downward adjustments of replacement space charged to Federal programs in the future.

(iv) The allowable costs to acquire facilities and equipment are limited to a fair market value available to the non-profit organization from an unrelated ("arm's length") third party.

(2) For non-profit organizations subject to "full coverage" under the Cost Accounting Standards (CAS) as defined at 48 CFR 9903.201, the interest allowability provisions of **subparagraph a** do not apply. Instead, these organizations' sponsored agreements are subject to CAS 414 (48 CFR 9903.414), cost of money as an element of the cost of facilities capital, and CAS 417 (48 CFR 9903.417), cost of money as an element of the cost of capital assets under construction.

(3) The following definitions are to be used for purposes of **paragraph 23**:

(a) **Re-acquired assets** means assets held by the non-profit organization prior to the effective date of this revision that have again come to be held by the organization, whether through repurchase or refinancing. It does not include assets acquired to replace older assets.

(b) **Initial equity contribution** means the amount or value of contributions made by non-Federal entities for the acquisition of the asset or prior to occupancy of facilities.

(c) **Asset costs** means the capitalizable costs of an asset, including construction costs, acquisition costs, and other such costs capitalized in accordance with GAAP.

b. Costs of organized fundraising, including financial campaigns, endowment drives, solicitation of gifts and bequests, and similar expenses incurred solely to raise capital or obtain contributions are unallowable.

c. Costs of investment counsel and staff and similar expenses incurred solely to enhance income from investments are unallowable.

d. Fundraising and investment activities shall be allocated an appropriate share of indirect costs under the conditions described in **subparagraph B.3 of Attachment A**.

**24. Labor relations costs.** Costs incurred in maintaining satisfactory relations between the organization and its employees, including costs of labor management committees, employee publications, and other related activities are allowable.



## 25. Lobbying.

a. Notwithstanding other provisions of this Circular, costs associated with the following activities are unallowable:

- (1) Attempts to influence the outcomes of any Federal, State, or local election, referendum, initiative, or similar procedure, through in kind or cash contributions, endorsements, publicity, or similar activity;
- (2) Establishing, administering, contributing to, or paying the expenses of a political party, campaign, political action committee, or other organization established for the purpose of influencing the outcomes of elections;
- (3) Any attempt to influence: (i) The introduction of Federal or State legislation; or (ii) the enactment or modification of any pending Federal or State legislation through communication with any member or employee of the Congress or State legislature (including efforts to influence State or local officials to engage in similar lobbying activity), or with any Government official or employee in connection with a decision to sign or veto enrolled legislation;
- (4) Any attempt to influence: (i) The introduction of Federal or State legislation; or (ii) the enactment or modification of any pending Federal or State legislation by preparing, distributing or using publicity or propaganda, or by urging members of the general public or any segment thereof to contribute to or participate in any mass demonstration, march, rally, fundraising drive, lobbying campaign or letter writing or telephone campaign; or
- (5) Legislative liaison activities, including attendance at legislative sessions or committee hearings, gathering information regarding legislation, and analyzing the effect of legislation, when such activities are carried on in support of or in knowing preparation for an effort to engage in unallowable lobbying.

b. The following activities are excepted from the coverage of **subparagraph a**:

- (1) Providing a technical and factual presentation of information on a topic directly related to the performance of a grant, contract or other agreement through hearing testimony, statements or letters to the Congress or a State legislature, or subdivision, member, or cognizant staff member thereof, in response to a documented request (including a Congressional Record notice requesting testimony or statements for the record at a regularly scheduled hearing) made by the recipient member, legislative body or subdivision, or a cognizant staff member thereof; provided such information is readily obtainable and can be readily put in deliverable form; and further provided that costs under this section for travel, lodging or meals are unallowable unless incurred to offer testimony at a regularly scheduled Congressional hearing pursuant to a written request for such presentation made by the Chairman or Ranking Minority Member of the Committee or Subcommittee conducting such hearing.
- (2) Any lobbying made unallowable by **subparagraph a(3)** to influence State legislation in order to directly reduce the cost, or to avoid material impairment of the organization's authority to perform the grant, contract, or other agreement.
- (3) Any activity specifically authorized by statute to be undertaken with funds from the grant, contract, or other agreement.

c. (1) When an organization seeks reimbursement for indirect costs, total lobbying costs shall be separately identified in the indirect cost rate proposal, and thereafter treated as other unallowable activity costs in accordance with the procedures of **subparagraph B.3 of Attachment A**.

(2) Organizations shall submit, as part of the annual indirect cost rate proposal, a certification that the requirements and standards of this paragraph have been complied with.

(3) Organizations shall maintain adequate records to demonstrate that the determination of costs as being allowable or unallowable pursuant to **paragraph 25** complies with the requirements of this Circular.

(4) Time logs, calendars, or similar records shall not be required to be created for purposes of complying with this paragraph during any particular calendar month when: (1) the employee engages in lobbying (as defined in **subparagraphs (a) and (b)**) 25 percent or less of the employee's compensated hours of employment during that calendar month, and (2) within the preceding five-year period, the organization has not materially misstated allowable or unallowable costs of any nature, including legislative lobbying costs. When conditions **(1) and (2)** are met, organizations are not required to establish records to support the allowability of claimed costs in addition to records already required or maintained. Also, when conditions **(1) and (2)** are met, the absence of time logs, calendars, or similar records will not serve as a basis for disallowing costs by contesting estimates of lobbying time spent by employees during a calendar month.

(5) Agencies shall establish procedures for resolving in advance, in consultation with OMB, any significant questions or disagreements concerning the interpretation or application of **paragraph 25**. Any such advance resolution shall be binding in any subsequent settlements, audits or investigations with respect to that grant or contract for purposes of interpretation of this Circular; provided, however, that this shall not be construed to prevent a contractor or grantee from contesting the lawfulness of such a determination.

**26. Losses on other awards.** Any excess of costs over income on any award is unallowable as a cost of any other award. This includes, but is not limited to, the organization's contributed portion by reason of cost sharing agreements or any under-recoveries through negotiation of lump sums for, or ceilings on, indirect costs.

**27. Maintenance and repair costs.** Costs incurred for necessary maintenance, repair, or upkeep of buildings and equipment (including Federal property unless otherwise provided for) which neither add to the permanent value of the property nor appreciably prolong its intended life, but keep it in an efficient operating condition, are allowable. Costs incurred for improvements which add to the permanent value of the buildings and equipment or appreciably prolong their intended life shall be treated as capital expenditures (see **paragraph 15**).

**28. Materials and supplies.** The costs of materials and supplies necessary to carry out an award are allowable. Such costs should be charged at their actual prices after deducting all cash discounts, trade discounts, rebates, and allowances received by the organization. Withdrawals from general stores or stockrooms should be charged at cost under any recognized method of pricing consistently applied. Incoming transportation charges may be a proper part of material cost. Materials and supplies charged as a direct cost should include only the materials and supplies actually used for the performance of the contract or grant, and due credit should be given for any excess materials or supplies retained, or returned to vendors.

**29. Meetings and conferences.**

- a. Costs associated with the conduct of meetings and conferences include the cost of renting facilities, meals, speakers' fees, and the like. But see **paragraph 14**, Entertainment costs, and **paragraph 34**, Participant support costs.
- b. To the extent that these costs are identifiable with a particular cost objective, they should be charged to that objective (see **paragraph B of Attachment A**). These costs are allowable, provided that they meet the general tests of allowability, shown in **paragraph A of Attachment A** to this Circular.
- c. Costs of meetings and conferences held to conduct the general administration of the organization are allowable.

**30. Memberships, subscriptions, and professional activity costs.**

- a. Costs of the organization's membership in business, technical, and professional organizations are allowable.
- b. Costs of the organization's subscriptions to business, professional, and technical periodicals are allowable.
- c. Costs of meetings and conferences, when the primary purpose is the dissemination of technical information, are allowable. This includes costs of meals, transportation, rental of facilities, and other items incidental to such meetings or conferences.
- d. Costs of membership in any civic or community organization are allowable with prior approval by Federal cognizant agency.
- e. Costs of membership in any country club or social or dining club or organization are unallowable.

**31. Organization costs.** Expenditures, such as incorporation fees, brokers' fees, fees to promoters, organizers or management consultants, attorneys, accountants, or investment counselors, whether or not employees of the organization, in connection with establishment or reorganization of an organization, are unallowable except with prior approval of the awarding agency.

**32. Overtime, extra-pay shift, and multi-shift premiums.** Premiums for overtime, extra-pay shifts, and multi-shift work are allowable only with the prior approval of the awarding agency except:

- a. When necessary to cope with emergencies, such as those resulting from accidents, natural disasters, breakdowns of equipment, or occasional operational bottlenecks of a sporadic nature.
- b. When employees are performing indirect functions, such as administration, maintenance, or accounting.
- c. In the performance of tests, laboratory procedures, or other similar operations which are continuous in nature and cannot reasonably be interrupted or otherwise completed.
- d. When lower overall cost to the Federal Government will result.

**33. Page charges in professional journals.** Page charges for professional journal publications are allowable as a necessary part of research costs, where:

- a. The research papers report work supported by the Federal Government; and
- b. The charges are levied impartially on all research papers published by the journal, whether or not by federally-sponsored authors.

**34. Participant support costs.** Participant support costs are direct costs for items such as stipends or subsistence allowances, travel allowances, and registration fees paid to or on behalf of participants or trainees (but not employees) in connection with meetings, conferences, symposia, or training projects. These costs are allowable with the prior approval of the awarding agency.

**35. Patent costs.**

- a. Costs of (i) preparing disclosures, reports, and other documents required by the award and of searching the art to the extent necessary to make such disclosures, (ii) preparing documents and any other patent costs in connection with the filing and prosecution of a United States patent application where title or royalty-free license is required by the Federal Government to be conveyed to the Federal Government, and (iii) general counseling services relating to patent and copyright matters, such as advice on patent and copyright laws, regulations, clauses, and employee agreements are allowable (but see **paragraph 39**).
- b. Cost of preparing disclosures, reports, and other documents and of searching the art to the extent necessary to make disclosures, if not required by the award, are unallowable. Costs in connection with (i) filing and prosecuting any foreign patent application, or (ii) any United States patent application, where the award does not require conveying title or a royalty-free license to the Federal Government, are unallowable (also see **paragraph 47**).

**36. Pension plans.** See **subparagraph 7.h**.

**37. Plant security costs.** Necessary expenses incurred to comply with Federal security requirements or for facilities protection, including wages, uniforms, and equipment of personnel are allowable.

**38. Pre-award costs.** Pre-award costs are those incurred prior to the effective date of the award directly pursuant to the negotiation and in anticipation of the award where such costs are necessary to comply with the proposed delivery schedule or period of performance. Such costs are allowable only to the extent that they would have been allowable if incurred after the date of the award and only with the written approval of the awarding agency.

**39. Professional service costs.**

- a. Costs of professional and consultant services rendered by persons who are members of a particular profession or possess a special skill, and who are not officers or employees of the organization, are allowable, subject to **subparagraphs b and c** when reasonable in relation to the services rendered and when not contingent upon recovery of the costs from the Federal Government.

- b. In determining the allowability of costs in a particular case, no single factor or any special combination of factors is necessarily determinative. However, the following factors are relevant:
- (1) The nature and scope of the service rendered in relation to the service required.
  - (2) The necessity of contracting for the service, considering the organization's capability in the particular area.
  - (3) The past pattern of such costs, particularly in the years prior to Federal awards.
  - (4) The impact of Federal awards on the organization's business (i.e., what new problems have arisen).
  - (5) Whether the proportion of Federal work to the organization's total business is such as to influence the organization in favor of incurring the cost, particularly where the services rendered are not of a continuing nature and have little relationship to work under Federal grants and contracts.
  - (6) Whether the service can be performed more economically by direct employment rather than contracting.
  - (7) The qualifications of the individual or concern rendering the service and the customary fees charged, especially on non-Federal awards.
  - (8) Adequacy of the contractual agreement for the service (e.g., description of the service, estimate of time required, rate of compensation, and termination provisions).
- c. In addition to the factors in **subparagraph b**, retainer fees to be allowable must be supported by evidence of bona fide services available or rendered.

#### **40. Profits and losses on disposition of depreciable property or other capital assets.**

- a. (1) Gains and losses on sale, retirement, or other disposition of depreciable property shall be included in the year in which they occur as credits or charges to cost grouping(s) in which the depreciation applicable to such property was included. The amount of the gain or loss to be included as a credit or charge to the appropriate cost grouping(s) shall be the difference between the amount realized on the property and the undepreciated basis of the property.
- (2) Gains and losses on the disposition of depreciable property shall not be recognized as a separate credit or charge under the following conditions:
- (a) The gain or loss is processed through a depreciation reserve account and is reflected in the depreciation allowable under **paragraph 11**.
  - (b) The property is given in exchange as part of the purchase price of a similar item and the gain or loss is taken into account in determining the depreciation cost basis of the new item.
  - (c) A loss results from the failure to maintain permissible insurance, except as otherwise provided in **subparagraph 22.a(3)**.
  - (d) Compensation for the use of the property was provided through use allowances in lieu of depreciation in accordance with **paragraph 11**.
  - (e) Gains and losses arising from mass or extraordinary sales, retirements, or other dispositions shall be considered on a case-by-case basis.
- b. Gains or losses of any nature arising from the sale or exchange of property other than the property covered in **subparagraph a** shall be excluded in computing award costs.

#### **41. Publication and printing costs.**

- a. Publication costs include the costs of printing (including the processes of composition, plate-making, press work, binding, and the end products produced by such processes), distribution, promotion, mailing, and general handling.

- b. If these costs are not identifiable with a particular cost objective, they should be allocated as indirect costs to all benefiting activities of the organization.
- c. Publication and printing costs are unallowable as direct costs except with the prior approval of the awarding agency.
- d. The cost of page charges in journals is addressed **paragraph 33**.

**42. Rearrangement and alteration costs.** Costs incurred for ordinary or normal rearrangement and alteration of facilities are allowable. Special arrangement and alteration costs incurred specifically for the project are allowable with the prior approval of the awarding agency.

**43. Reconversion costs.** Costs incurred in the restoration or rehabilitation of the organization's facilities to approximately the same condition existing immediately prior to commencement of Federal awards, fair wear and tear excepted, are allowable.

**44. Recruiting costs.**

a. Subject to **subparagraphs b, c, and d**, and provided that the size of the staff recruited and maintained is in keeping with workload requirements, costs of "help wanted" advertising, operating costs of an employment office necessary to secure and maintain an adequate staff, costs of operating an aptitude and educational testing program, travel costs of employees while engaged in recruiting personnel, travel costs of applicants for interviews for prospective employment, and relocation costs incurred incident to recruitment of new employees, are allowable to the extent that such costs are incurred pursuant to a well-managed recruitment program. Where the organization uses employment agencies, costs that are not in excess of standard commercial rates for such services are allowable.

b. In publications, costs of help wanted advertising that includes color, includes advertising material for other than recruitment purposes, or is excessive in size (taking into consideration recruitment purposes for which intended and normal organizational practices in this respect), are unallowable.

c. Costs of help wanted advertising, special emoluments, fringe benefits, and salary allowances incurred to attract professional personnel from other organizations that do not meet the test of reasonableness or do not conform with the established practices of the organization, are unallowable.

d. Where relocation costs incurred incident to recruitment of a new employee have been allowed either as an allocable direct or indirect cost, and the newly hired employee resigns for reasons within his control within twelve months after being hired, the organization will be required to refund or credit such relocation costs to the Federal Government.

**45. Relocation costs.**

a. Relocation costs are costs incident to the permanent change of duty assignment (for an indefinite period or for a stated period of not less than 12 months) of an existing employee or upon recruitment of a new employee. Relocation costs are allowable, subject to the limitation described in **subparagraphs b, c, and d**, provided that:

- (1) The move is for the benefit of the employer.

(2) Reimbursement to the employee is in accordance with an established written policy consistently followed by the employer.

(3) The reimbursement does not exceed the employee's actual (or reasonably estimated) expenses.

b. Allowable relocation costs for current employees are limited to the following:

(1) The costs of transportation of the employee, members of his immediate family and his household, and personal effects to the new location.

(2) The costs of finding a new home, such as advance trips by employees and spouses to locate living quarters and temporary lodging during the transition period, up to maximum period of 30 days, including advance trip time.

(3) Closing costs, such as brokerage, legal, and appraisal fees, incident to the disposition of the employee's former home. These costs, together with those described in **(4)**, are limited to 8 per cent of the sales price of the employee's former home.

(4) The continuing costs of ownership of the vacant former home after the settlement or lease date of the employee's new permanent home, such as maintenance of buildings and grounds (exclusive of fixing up expenses), utilities, taxes, and property insurance.

(5) Other necessary and reasonable expenses normally incident to relocation, such as the costs of canceling an unexpired lease, disconnecting and reinstalling household appliances, and purchasing insurance against loss of or damages to personal property. The cost of canceling an unexpired lease is limited to three times the monthly rental.

c. Allowable relocation costs for new employees are limited to those described in **(1) and (2) of subparagraph b**. When relocation costs incurred incident to the recruitment of new employees have been allowed either as a direct or indirect cost and the employee resigns for reasons within his control within 12 months after hire, the organization shall refund or credit the Federal Government for its share of the cost. However, the costs of travel to an overseas location shall be considered travel costs in accordance with **paragraph 55** and not relocation costs for the purpose of this paragraph if dependents are not permitted at the location for any reason and the costs do not include costs of transporting household goods.

d. The following costs related to relocation are unallowable:

(1) Fees and other costs associated with acquiring a new home.

(2) A loss on the sale of a former home.

(3) Continuing mortgage principal and interest payments on a home being sold.

(4) Income taxes paid by an employee related to reimbursed relocation costs.

#### 46. Rental costs.

a. Subject to the limitations described in **subparagraphs b through d**, rental costs are allowable to the extent that the rates are reasonable in light of such factors as: rental costs of comparable property, if any; market conditions in the area; alternatives available; and the type, life expectancy, condition, and value of the property leased.

b. Rental costs under sale and leaseback arrangements are allowable only up to the amount that would be allowed had the organization continued to own the property.

c. Rental costs under less-than-arms-length leases are allowable only up to the amount that would be allowed had title to the property vested in the organization. For this purpose, a less-than-arms-length lease is one under which one party to the lease agreement is able to control or substantially influence the actions of the other. Such leases include, but are not limited to those between (i) divisions of an organization; (ii) organizations under common control through common officers, directors, or members; and (iii) an organization and a director, trustee, officer,

or key employee of the organization or his immediate family either directly or through corporations, trusts, or similar arrangements in which they hold a controlling interest.

d. Rental costs under leases which are required to be treated as capital leases under GAAP, are allowable only up to the amount that would be allowed had the organization purchased the property on the date the lease agreement was executed, i.e., to the amount that minimally would pay for depreciation or use allowances, maintenance, taxes, and insurance. Interest costs related to capitalized leases are allowable to the extent they meet criteria in **subparagraph 23.a**. Unallowable costs include amounts paid for profit, management fees, and taxes that would not have been incurred had the organization purchased the facility.

**47. Royalties and other costs for use of patents and copyrights.**

a. Royalties on a patent or copyright or amortization of the cost of acquiring by purchase a copyright, patent, or rights thereto, necessary for the proper performance of the award are allowable unless:

- (1) The Federal Government has a license or the right to free use of the patent or copyright.
- (2) The patent or copyright has been adjudicated to be invalid, or has been administratively determined to be invalid.

(3) The patent or copyright is considered to be unenforceable.

(4) The patent or copyright is expired.

b. Special care should be exercised in determining reasonableness where the royalties may have arrived at as a result of less-than-arm's-length bargaining, e.g.:

- (1) Royalties paid to persons, including corporations, affiliated with the organization.
- (2) Royalties paid to unaffiliated parties, including corporations, under an agreement entered into in contemplation that a Federal award would be made.

(3) Royalties paid under an agreement entered into after an award is made to an organization.

c. In any case involving a patent or copyright formerly owned by the organization, the amount of royalty allowed should not exceed the cost which would have been allowed had the organization retained title thereto.

**48. Selling and marketing.** Costs of selling and marketing any products or services of the organization (unless allowed under **paragraph 1** as allowable public relations costs) are unallowable. These costs, however, are allowable as direct costs, with prior approval by awarding agencies, when they are necessary for the performance of Federal programs.

**49. Severance pay.**

a. Severance pay, also commonly referred to as dismissal wages, is a payment in addition to regular salaries and wages, by organizations to workers whose employment is being terminated. Costs of severance pay are allowable only to the extent that in each case, it is required by (i) law, (ii) employer-employee agreement, (iii) established policy that constitutes, in effect, an implied agreement on the organization's part, or (iv) circumstances of the particular employment.

b. Costs of severance payments are divided into two categories as follows:

- (1) Actual normal turnover severance payments shall be allocated to all activities; or, where the organization provides for a reserve for normal severances, such method will be acceptable if the charge to current operations is reasonable in light of payments actually made for normal



severances over a representative past period, and if amounts charged are allocated to all activities of the organization.

(2) Abnormal or mass severance pay is of such a conjectural nature that measurement of costs by means of an accrual will not achieve equity to both parties. Thus, accruals for this purpose are not allowable. However, the Federal Government recognizes its obligation to participate, to the extent of its fair share, in any specific payment. Thus, allowability will be considered on a case-by-case basis in the event or occurrence.

c. Costs incurred in certain severance pay packages (commonly known as "a golden parachute" payment) which are in an amount in excess of the normal severance pay paid by the organization to an employee upon termination of employment and are paid to the employee contingent upon a change in management control over, or ownership of, the organization's assets are unallowable.

d. Severance payments to foreign nationals employed by the organization outside the United States, to the extent that the amount exceeds the customary or prevailing practices for the organization in the United States are unallowable, unless they are necessary for the performance of Federal programs and approved by awarding agencies.

e. Severance payments to foreign nationals employed by the organization outside the United States due to the termination of the foreign national as a result of the closing of, or curtailment of activities by, the organization in that country, are unallowable, unless they are necessary for the performance of Federal programs and approved by awarding agencies.

#### **50. Specialized service facilities.**

a. The costs of services provided by highly complex or specialized facilities operated by the organization, such as electronic computers and wind tunnels, are allowable, provided the charges for the services meet the conditions of either **subparagraph b or c** and, in addition, take into account any items of income or Federal financing that qualify as applicable credits under **subparagraph A.5 of Attachment A**.

b. The costs of such services, when material, must be charged directly to applicable awards based on actual usage of the services on the basis of a schedule of rates or established methodology that (i) does not discriminate against federally-supported activities of the organization, including usage by the organization for internal purposes, and (ii) is designed to recover only the aggregate costs of the services. The costs of each service shall consist normally of both its direct costs and its allocable share of all indirect costs. Advance agreements pursuant to **subparagraph A.6 of Attachment A** are particularly important in this situation.

c. Where the costs incurred for a service are not material, they may be allocated as indirect costs.

#### **51. Taxes.**

a. In general, taxes which the organization is required to pay and which are paid or accrued in accordance with GAAP, and payments made to local governments in lieu of taxes which are commensurate with the local government services received are allowable, except for (i) taxes from which exemptions are available to the organization directly or which are available to the organization based on an exemption afforded the Federal Government and in the latter case

when the awarding agency makes available the necessary exemption certificates, (ii) special assessments on land which represent capital improvements, and (iii) Federal income taxes.

b. Any refund of taxes, and any payment to the organization of interest thereon, which were allowed as award costs, will be credited either as a cost reduction or cash refund, as appropriate, to the Federal Government.

**52. Termination costs.** Termination of awards generally give rise to the incurrence of costs, or the need for special treatment of costs, which would not have arisen had the award not been terminated. Cost principles covering these items are set forth below. They are to be used in conjunction with the other provisions of this Circular in termination situations.

a. **Common items.** The cost of items reasonably usable on the organization's other work shall not be allowable unless the organization submits evidence that it would not retain such items at cost without sustaining a loss. In deciding whether such items are reasonably usable on other work of the organization, the awarding agency should consider the organization's plans and orders for current and scheduled activity. Contemporaneous purchases of common items by the organization shall be regarded as evidence that such items are reasonably usable on the organization's other work. Any acceptance of common items as allocable to the terminated portion of the award shall be limited to the extent that the quantities of such items on hand, in transit, and on order are in excess of the reasonable quantitative requirements of other work.

b. **Costs continuing after termination.** If in a particular case, despite all reasonable efforts by the organization, certain costs cannot be discontinued immediately after the effective date of termination, such costs are generally allowable within the limitations set forth in this Circular, except that any such costs continuing after termination due to the negligent or willful failure of the organization to discontinue such costs shall be unallowable.

c. **Loss of useful value.** Loss of useful value of special tooling, machinery and equipment which was not charged to the award as a capital expenditure is generally allowable if:

(1) Such special tooling, machinery, or equipment is not reasonably capable of use in the other work of the organization.

(2) The interest of the Federal Government is protected by transfer of title or by other means deemed appropriate by the awarding agency;

d. **Rental costs.** Rental costs under unexpired leases are generally allowable where clearly shown to have been reasonably necessary for the performance of the terminated award less the residual value of such leases, if (i) the amount of such rental claimed does not exceed the reasonable use value of the property leased for the period of the award and such further period as may be reasonable, and (ii) the organization makes all reasonable efforts to terminate, assign, settle, or otherwise reduce the cost of such lease. There also may be included the cost of alterations of such leased property, provided such alterations were necessary for the performance of the award, and of reasonable restoration required by the provisions of the lease.

e. **Settlement expenses.** Settlement expenses including the following are generally allowable:

(1) Accounting, legal, clerical, and similar costs reasonably necessary for:

(a) The preparation and presentation to awarding agency of settlement claims and supporting data with respect to the terminated portion of the award, unless the termination is for default (see Sec. \_\_.61 of Circular A-110); and

(b) The termination and settlement of subawards.

(2) Reasonable costs for the storage, transportation, protection, and disposition of property provided by the Federal Government or acquired or produced for the award, except when

grantees or contractors are reimbursed for disposals at a predetermined amount in accordance with Sec. \_\_.30 through \_\_.37 of Circular A-110.

(3) Indirect costs related to salaries and wages incurred as settlement expenses in **subparagraphs (1) and (2)**. Normally, such indirect costs shall be limited to fringe benefits, occupancy cost, and immediate supervision.

f. **Claims under subawards.** Claims under subawards, including the allocable portion of claims which are common to the award, and to other work of the organization are generally allowable. An appropriate share of the organization's indirect expense may be allocated to the amount of settlements with subcontractors and/or subgrantees, provided that the amount allocated is otherwise consistent with the basic guidelines contained in **Attachment A**. The indirect expense so allocated shall exclude the same and similar costs claimed directly or indirectly as settlement expenses.

### 53. Training and education costs.

a. Costs of preparation and maintenance of a program of instruction including but not limited to on-the-job, classroom, and apprenticeship training, designed to increase the vocational effectiveness of employees, including training materials, textbooks, salaries or wages of trainees (excluding overtime compensation which might arise therefrom), and (i) salaries of the director of training and staff when the training program is conducted by the organization; or (ii) tuition and fees when the training is in an institution not operated by the organization, are allowable.

b. Costs of part-time education, at an undergraduate or post-graduate college level, including that provided at the organization's own facilities, are allowable only when the course or degree pursued is relative to the field in which the employee is now working or may reasonably be expected to work, and are limited to:

(1) Training materials.

(2) Textbooks.

(3) Fees charges by the educational institution.

(4) Tuition charged by the educational institution or, in lieu of tuition, instructors' salaries and the related share of indirect costs of the educational institution to the extent that the sum thereof is not in excess of the tuition which would have been paid to the participating educational institution.

(5) Salaries and related costs of instructors who are employees of the organization.

(6) Straight-time compensation of each employee for time spent attending classes during working hours not in excess of 156 hours per year and only to the extent that circumstances do not permit the operation of classes or attendance at classes after regular working hours; otherwise, such compensation is unallowable.

c. Costs of tuition, fees, training materials, and textbooks (but not subsistence, salary, or any other emoluments) in connection with full-time education, including that provided at the organization's own facilities, at a post-graduate (but not undergraduate) college level, are allowable only when the course or degree pursued is related to the field in which the employee is now working or may reasonably be expected to work, and only where the costs receive the prior approval of the awarding agency. Such costs are limited to the costs attributable to a total period not to exceed one school year for each employee so trained. In unusual cases the period may be extended.

d. Costs of attendance of up to 16 weeks per employee per year at specialized programs specifically designed to enhance the effectiveness of executives or managers or to prepare

employees for such positions are allowable. Such costs include enrollment fees, training materials, textbooks and related charges, employees' salaries, subsistence, and travel. Costs allowable under this paragraph do not include those for courses that are part of a degree-oriented curriculum, which are allowable only to the extent set forth in **subparagraphs b and c**. e. Maintenance expense, and normal depreciation or fair rental, on facilities owned or leased by the organization for training purposes are allowable to the extent set forth in **paragraphs 11, 27, and 46**.

f. Contributions or donations to educational or training institutions, including the donation of facilities or other properties, and scholarships or fellowships, are unallowable.

g. Training and education costs in excess of those otherwise allowable under **subparagraphs b and c** may be allowed with prior approval of the awarding agency. To be considered for approval, the organization must demonstrate that such costs are consistently incurred pursuant to an established training and education program, and that the course or degree pursued is relative to the field in which the employee is now working or may reasonably be expected to work.

**54. Transportation costs.** Transportation costs include freight, express, cartage, and postage charges relating either to goods purchased, in process, or delivered. These costs are allowable. When such costs can readily be identified with the items involved, they may be directly charged as transportation costs or added to the cost of such items (see **paragraph 28**). Where identification with the materials received cannot readily be made, transportation costs may be charged to the appropriate indirect cost accounts if the organization follows a consistent, equitable procedure in this respect.

**55. Travel costs.**

a. Travel costs are the expenses for transportation, lodging, subsistence, and related items incurred by employees who are in travel status on official business of the organization. Travel costs are allowable subject to **subparagraphs b through e**, when they are directly attributable to specific work under an award or are incurred in the normal course of administration of the organization.

b. Such costs may be charged on an actual basis, on a per diem or mileage basis in lieu of actual costs incurred, or on a combination of the two, provided the method used results in charges consistent with those normally allowed by the organization in its regular operations.

c. The difference in cost between first-class air accommodations and less than first-class air accommodations is unallowable except when less than first-class air accommodations are not reasonably available to meet necessary mission requirements, such as where less than first-class accommodations would (i) require circuitous routing, (ii) require travel during unreasonable hours, (iii) greatly increase the duration of the flight, (iv) result in additional costs which would offset the transportation savings, or (v) offer accommodations which are not reasonably adequate for the medical needs of the traveler.

d. Necessary and reasonable costs of family movements and personnel movements of a special or mass nature are allowable, pursuant to **paragraphs 44 and 45**, subject to allocation on the basis of work or time period benefited when appropriate. Advance agreements are particularly important.

e. Direct charges for foreign travel costs are allowable only when the travel has received prior approval of the awarding agency. Each separate foreign trip must be approved. For purposes of this provision, foreign travel is defined as any travel outside of Canada and the United States

and its territories and possessions. However, for an organization located in foreign countries, the term "foreign travel" means travel outside that country.

**56. Trustees.** Travel and subsistence costs of trustees (or directors) are allowable. The costs are subject to restrictions regarding lodging, subsistence and air travel costs provided in **paragraph 55.**

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ATTACHMENT C  
Circular No. A-122

#### NON-PROFIT ORGANIZATIONS NOT SUBJECT TO THIS CIRCULAR

Aerospace Corporation, El Segundo, California  
Argonne National Laboratory, Chicago, Illinois  
Atomic Casualty Commission, Washington, D.C.  
Battelle Memorial Institute, Headquartered in Columbus, Ohio  
Brookhaven National Laboratory, Upton, New York  
Charles Stark Draper Laboratory, Incorporated, Cambridge, Massachusetts  
Environmental Institute of Michigan, Ann Arbor, Michigan  
Hanford Environmental Health Foundation, Richland, Washington  
IIT Research Institute, Chicago, Illinois  
Institute for Defense Analysis, Alexandria, Virginia  
Mitre Corporation, Bedford, Massachusetts  
National Radiological Astronomy Observatory, Green Bank, West Virginia  
National Renewable Energy Laboratory, Golden, Colorado  
Oak Ridge Associated Universities, Oak Ridge, Tennessee  
Rand Corporation, Santa Monica, California  
Research Triangle Institute, Research Triangle Park, North Carolina  
Riverside Research Institute, New York, New York  
Southern Research Institute, Birmingham, Alabama  
Southwest Research Institute, San Antonio, Texas  
SRI International, Menlo Park, California  
Syracuse Research Corporation, Syracuse, New York  
Universities Research Association, Incorporated (National Acceleration Lab), Argonne, Illinois  
Non-profit insurance companies, such as Blue Cross and Blue Shield Organizations  
Other non-profit organizations as negotiated with awarding agencies

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**OMB Circular A-133 (Text Only)**

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**Circular No. A-133 - Revised June 24, 1997**

**Audits of States, Local Governments, and Non-Profit Organizations**

[\(Accompanying Federal Register Materials -- Audits of States, Local Governments, and Non-Profit Organizations June 30, 1997\)](#)

TO THE HEADS OF EXECUTIVE DEPARTMENTS AND ESTABLISHMENTS

SUBJECT: Audits of States, Local Governments, and Non-Profit Organizations

1. **Purpose.** This Circular is issued pursuant to the Single Audit Act of 1984, P.L. 98-502, and the Single Audit Act Amendments of 1996, P.L. 104-156. It sets forth standards for obtaining consistency and uniformity among Federal agencies for the audit of States, local governments, and non-profit organizations expending Federal awards.

2. **Authority.** Circular A-133 is issued under the authority of sections 503, 1111, and 7501 *et seq.* of title 31, United States Code, and Executive Orders 8248 and 11541.

3. **Rescission and Supersession.** This Circular rescinds Circular A-128, "Audits of State and Local Governments," issued April 12, 1985, and supersedes the prior Circular A-133, "Audits of Institutions of Higher Education and Other Non-Profit Institutions," issued April 22, 1996. For effective dates, see paragraph 10.

4. **Policy.** Except as provided herein, the standards set forth in this Circular shall be applied by all Federal agencies. If any statute specifically prescribes policies or specific requirements that differ from the standards provided herein, the provisions of the subsequent statute shall govern. Federal agencies shall apply the provisions of the sections of this Circular to non-Federal entities, whether they are recipients expending Federal awards received directly from Federal awarding agencies, or are subrecipients expending Federal awards received from a pass-through entity (a recipient or another subrecipient).

This Circular does not apply to non-U.S. based entities expending Federal awards received either directly as a recipient or indirectly as a subrecipient.

5. **Definitions.** The definitions of key terms used in this Circular are contained in §\_\_\_\_.105 in the Attachment to this Circular.

6. **Required Action.** The specific requirements and responsibilities of Federal agencies and non-Federal entities are set forth in the Attachment to this Circular. Federal agencies making awards to non-Federal entities, either directly or indirectly, shall adopt the language in the Circular in codified regulations as provided in Section 10 (below), unless different provisions are required by Federal statute or are approved by the Office of Management and Budget (OMB).

7. **OMB Responsibilities.** OMB will review Federal agency regulations and implementation of this Circular, and will provide interpretations of policy requirements and assistance to ensure uniform, effective and efficient implementation.

8. **Information Contact.** Further information concerning Circular A-133 may be obtained by contacting the Financial Standards and Reporting Branch, Office of Federal Financial Management, Office of Management and Budget, Washington, DC 20503, telephone (202) 395-3993.

9. **Review Date.** This Circular will have a policy review three years from the date of issuance.

10. **Effective Dates.** The standards set forth in §\_\_\_\_.400 of the Attachment to this Circular, which apply directly to Federal agencies, shall be effective July 1, 1996, and shall apply to audits of fiscal years beginning after June 30, 1996, except as otherwise specified in §\_\_\_\_.400(a).

The standards set forth in this Circular that Federal agencies shall apply to non-Federal entities shall be adopted by Federal agencies in codified regulations not later than 60 days after publication of this final revision in the **Federal Register**, so that they will apply to audits of fiscal years beginning after June 30, 1996, with the exception that §\_\_\_\_.305(b) of the Attachment applies to audits of fiscal years beginning after June 30, 1998. The requirements of Circular A-128, although the Circular is rescinded, and the 1990 version of Circular A-133 remain in effect for audits of fiscal years beginning on or before June 30, 1996.

/S/

**Franklin D. Raines**

*Director*

Attachment

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PART\_\_ --AUDITS OF STATES, LOCAL GOVERNMENTS, AND NON-PROFIT ORGANIZATIONS

[Subpart A--General](#)

Sec.

\_\_\_\_.100 Purpose.

\_\_\_\_.105 Definitions.

[Subpart B--Audits](#)

\_\_\_\_.200 Audit requirements.

\_\_\_\_.205 Basis for determining Federal awards expended.

\_\_\_\_.210 Subrecipient and vendor determinations.

\_\_\_\_.215 Relation to other audit requirements.

\_\_\_\_.220 Frequency of audits.

\_\_\_\_.225 Sanctions.

\_\_\_\_.230 Audit costs.

\_\_\_\_.235 Program-specific audits.

[Subpart C--Auditees](#)

\_\_\_\_.300 Auditee responsibilities.

\_\_\_\_.305 Auditor selection.

\_\_\_\_.310 Financial statements.

\_\_\_\_.315 Audit findings follow-up.

\_\_\_\_.320 Report submission.

[Subpart D--Federal Agencies and Pass-Through Entities](#)

- \_\_\_ .400 Responsibilities.
- \_\_\_ .405 Management decision.

#### Subpart E--Auditors

- \_\_\_ .500 Scope of audit.
- \_\_\_ .505 Audit reporting.
- \_\_\_ .510 Audit findings.
- \_\_\_ .515 Audit working papers.
- \_\_\_ .520 Major program determination.
- \_\_\_ .525 Criteria for Federal program risk.
- \_\_\_ .530 Criteria for a low-risk auditee.

Appendix A to Part \_\_\_ - Data Collection Form (Form SF-SAC).

Appendix B to Part \_\_\_ - Circular A-133 Compliance Supplement.

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#### **Subpart A--General**

##### **§ \_\_\_ .100 Purpose.**

This part sets forth standards for obtaining consistency and uniformity among Federal agencies for the audit of non-Federal entities expending Federal awards.

##### **§ \_\_\_ .105 Definitions.**

**Auditee** means any non-Federal entity that expends Federal awards which must be audited under this part. **Auditor** means an auditor, that is a public accountant or a Federal, State or local government audit organization, which meets the general standards specified in generally accepted government auditing standards (GAGAS). The term **auditor** does not include internal auditors of non-profit organizations.

**Audit finding** means deficiencies which the auditor is required by § \_\_\_ .510(a) to report in the schedule of findings and questioned costs.

**CFDA number** means the number assigned to a Federal program in the **Catalog of Federal Domestic Assistance** (CFDA).

**Cluster of programs** means a grouping of closely related programs that share common compliance requirements. The types of clusters of programs are research and development (R&D), student financial aid (SFA), and other clusters. "Other clusters" are as defined by the Office of Management and Budget (OMB) in the compliance supplement or as designated by a State for Federal awards the State provides to its subrecipients that meet the definition of a cluster of programs. When designating an "other cluster," a State shall identify the Federal awards included in the cluster and advise the subrecipients of compliance requirements applicable to the cluster, consistent with § \_\_\_ .400(d)(1) and § \_\_\_ .400(d)(2), respectively. A cluster of programs shall be considered as one program for



determining major programs, as described in §\_\_\_\_.520, and, with the exception of R&D as described in §\_\_\_\_.200(c), whether a program-specific audit may be elected.

**Cognizant agency for audit** means the Federal agency designated to carry out the responsibilities described in §\_\_\_\_.400(a).

**Compliance supplement** refers to the **Circular A-133 Compliance Supplement**, included as Appendix B to Circular A-133, or such documents as OMB or its designee may issue to replace it. This document is available from the Government Printing Office, Superintendent of Documents, Washington, DC 20402-9325.

**Corrective action** means action taken by the auditee that:

- (1) Corrects identified deficiencies;
- (2) Produces recommended improvements; or
- (3) Demonstrates that audit findings are either invalid or do not warrant auditee action.

**Federal agency** has the same meaning as the term **agency** in Section 551(1) of title 5, United States Code.

**Federal award** means Federal financial assistance and Federal cost-reimbursement contracts that non-Federal entities receive directly from Federal awarding agencies or indirectly from pass-through entities. It does not include procurement contracts, under grants or contracts, used to buy goods or services from vendors. Any audits of such vendors shall be covered by the terms and conditions of the contract. Contracts to operate Federal Government owned, contractor operated facilities (GOCOs) are excluded from the requirements of this part.

**Federal awarding agency** means the Federal agency that provides an award directly to the recipient.

**Federal financial assistance** means assistance that non-Federal entities receive or administer in the form of grants, loans, loan guarantees, property (including donated surplus property), cooperative agreements, interest subsidies, insurance, food commodities, direct appropriations, and other assistance, but does not include amounts received as reimbursement for services rendered to individuals as described in §\_\_\_\_.205(h) and §\_\_\_\_.205(i).

**Federal program** means:

- (1) All Federal awards to a non-Federal entity assigned a single number in the CFDA.
- (2) When no CFDA number is assigned, all Federal awards from the same agency made for the same purpose should be combined and considered one program.
- (3) Notwithstanding paragraphs (1) and (2) of this definition, a cluster of programs. The types of clusters of programs are:
  - (i) Research and development (R&D);

(ii) Student financial aid (SFA); and

(iii) "Other clusters," as described in the definition of cluster of programs in this section.

**GAGAS** means generally accepted government auditing standards issued by the Comptroller General of the United States, which are applicable to financial audits.

**Generally accepted accounting principles** has the meaning specified in generally accepted auditing standards issued by the American Institute of Certified Public Accountants (AICPA).

**Indian tribe** means any Indian tribe, band, nation, or other organized group or community, including any Alaskan Native village or regional or village corporation (as defined in, or established under, the Alaskan Native Claims Settlement Act) that is recognized by the United States as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

**Internal control** means a process, effected by an entity's management and other personnel, designed to provide reasonable assurance regarding the achievement of objectives in the following categories:

- (1) Effectiveness and efficiency of operations;
- (2) Reliability of financial reporting; and
- (3) Compliance with applicable laws and regulations.

**Internal control pertaining to the compliance requirements for Federal programs** (Internal control over Federal programs) means a process--effected by an entity's management and other personnel--designed to provide reasonable assurance regarding the achievement of the following objectives for Federal programs:

- (1) Transactions are properly recorded and accounted for to:
  - (i) Permit the preparation of reliable financial statements and Federal reports;
  - (ii) Maintain accountability over assets; and
  - (iii) Demonstrate compliance with laws, regulations, and other compliance requirements;
- (2) Transactions are executed in compliance with:
  - (i) Laws, regulations, and the provisions of contracts or grant agreements that could have a direct and material effect on a Federal program; and
  - (ii) Any other laws and regulations that are identified in the compliance supplement; and
- (3) Funds, property, and other assets are safeguarded against loss from unauthorized use or disposition.

**Loan** means a Federal loan or loan guarantee received or administered by a non-Federal entity.

**Local government** means any unit of local government within a State, including a county, borough, municipality, city, town, township, parish, local public authority, special district, school district, intrastate district, council of governments, and any other instrumentality of local government.

**Major program** means a Federal program determined by the auditor to be a major program in accordance with § \_\_\_.520 or a program identified as a major program by a Federal agency or pass-through entity in accordance with § \_\_\_.215(c).

**Management decision** means the evaluation by the Federal awarding agency or pass-through entity of the audit findings and corrective action plan and the issuance of a written decision as to what corrective action is necessary.

**Non-Federal entity** means a State, local government, or non-profit organization.

**Non-profit organization** means:

(1) any corporation, trust, association, cooperative, or other organization that:

(i) Is operated primarily for scientific, educational, service, charitable, or similar purposes in the public interest;

(ii) Is not organized primarily for profit; and

(iii) Uses its net proceeds to maintain, improve, or expand its operations; and

(2) The term **non-profit organization** includes non-profit institutions of higher education and hospitals.

**OMB** means the Executive Office of the President, Office of Management and Budget.

**Oversight agency for audit** means the Federal awarding agency that provides the predominant amount of direct funding to a recipient not assigned a cognizant agency for audit. When there is no direct funding, the Federal agency with the predominant indirect funding shall assume the oversight responsibilities. The duties of the oversight agency for audit are described in § \_\_\_.400(b).

**Pass-through entity** means a non-Federal entity that provides a Federal award to a subrecipient to carry out a Federal program.

**Program-specific audit** means an audit of one Federal program as provided for in § \_\_\_.200(c) and § \_\_\_.235.

**Questioned cost** means a cost that is questioned by the auditor because of an audit finding:

(1) Which resulted from a violation or possible violation of a provision of a law, regulation, contract, grant, cooperative agreement, or other agreement or document governing the use of Federal funds, including funds used to match Federal funds;

(2) Where the costs, at the time of the audit, are not supported by adequate documentation; or

(3) Where the costs incurred appear unreasonable and do not reflect the actions a prudent person would take in the circumstances.

**Recipient** means a non-Federal entity that expends Federal awards received directly from a Federal awarding agency to carry out a Federal program.

**Research and development (R&D)** means all research activities, both basic and applied, and all development activities that are performed by a non-Federal entity. **Research** is defined as a systematic study directed toward fuller scientific knowledge or understanding of the subject studied. The term research also includes activities involving the training of individuals in research techniques where such activities utilize the same facilities as other research and development activities and where such activities are not included in the instruction function. **Development** is the systematic use of knowledge and understanding gained from research directed toward the production of useful materials, devices, systems, or methods, including design and development of prototypes and processes.

**Single audit** means an audit which includes both the entity's financial statements and the Federal awards as described in § \_\_.500.

**State** means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands, any instrumentality thereof, any multi-State, regional, or interstate entity which has governmental functions, and any Indian tribe as defined in this section.

**Student Financial Aid (SFA)** includes those programs of general student assistance, such as those authorized by Title IV of the Higher Education Act of 1965, as amended, (20 U.S.C. 1070 **et seq.**) which is administered by the U.S. Department of Education, and similar programs provided by other Federal agencies. It does not include programs which provide fellowships or similar Federal awards to students on a competitive basis, or for specified studies or research.

**Subrecipient** means a non-Federal entity that expends Federal awards received from a pass-through entity to carry out a Federal program, but does not include an individual that is a beneficiary of such a program. A subrecipient may also be a recipient of other Federal awards directly from a Federal awarding agency. Guidance on distinguishing between a subrecipient and a vendor is provided in § \_\_.210.

**Types of compliance requirements** refers to the types of compliance requirements listed in the compliance supplement. Examples include: activities allowed or unallowed; allowable costs/cost principles; cash management; eligibility; matching, level of effort, earmarking; and, reporting.

**Vendor** means a dealer, distributor, merchant, or other seller providing goods or services that are required for the conduct of a Federal program. These goods or services may be for an organization's own use or for the use of beneficiaries of the Federal program. Additional guidance on distinguishing between a subrecipient and a vendor is provided in § \_\_.210.

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## Subpart B--Audits

### § \_\_.200 Audit requirements.

(a) **Audit required.** Non-Federal entities that expend \$300,000 or more in a year in Federal awards shall have a single or program-specific audit conducted for that year in accordance with the provisions of this part. Guidance on determining Federal awards expended is provided in § \_\_.205.

(b) **Single audit.** Non-Federal entities that expend \$300,000 or more in a year in Federal awards shall have a single audit conducted in accordance with § \_\_.500 except when they elect to have a program-specific audit conducted in accordance with paragraph (c) of this section.

(c) **Program-specific audit election.** When an auditee expends Federal awards under only one Federal program (excluding R&D) and the Federal program's laws, regulations, or grant agreements do not require a financial statement audit of the auditee, the auditee may elect to have a program-specific audit conducted in accordance with § \_\_.235. A program-specific audit may not be elected for R&D unless all of the Federal awards expended were received from the same Federal agency, or the same Federal agency and the same pass-through entity, and that Federal agency, or pass-through entity in the case of a subrecipient, approves in advance a program-specific audit.

(d) **Exemption when Federal awards expended are less than \$300,000.** Non-Federal entities that expend less than \$300,000 a year in Federal awards are exempt from Federal audit requirements for that year, except as noted in § \_\_.215(a), but records must be available for review or audit by appropriate officials of the Federal agency, pass-through entity, and General Accounting Office (GAO).

(e) **Federally Funded Research and Development Centers (FFRDC).** Management of an auditee that owns or operates a FFRDC may elect to treat the FFRDC as a separate entity for purposes of this part.

### § \_\_.205 Basis for determining Federal awards expended.

(a) **Determining Federal awards expended.** The determination of when an award is expended should be based on when the activity related to the award occurs. Generally, the activity pertains to events that require the non-Federal entity to comply with laws, regulations, and the provisions of contracts or grant agreements, such as: expenditure/expense transactions associated with grants, cost-reimbursement contracts, cooperative agreements, and direct appropriations; the disbursement of funds passed through to subrecipients; the use of loan proceeds under loan and loan guarantee programs; the receipt of property; the receipt of surplus property; the receipt or use of program income; the distribution or consumption of food commodities; the disbursement of amounts entitling the non-Federal entity to an interest subsidy; and, the period when insurance is in force.

(b) **Loan and loan guarantees (loans).** Since the Federal Government is at risk for loans until the debt is repaid, the following guidelines shall be used to calculate the value of Federal awards expended under loan programs, except as noted in paragraphs (c) and (d) of this section:

(1) Value of new loans made or received during the fiscal year; plus

(2) Balance of loans from previous years for which the Federal Government imposes continuing compliance requirements; plus

(3) Any interest subsidy, cash, or administrative cost allowance received.

(c) **Loan and loan guarantees (loans) at institutions of higher education.** When loans are made to students of an institution of higher education but the institution does not make the loans, then only the value of loans made during the year shall be considered Federal awards expended in that year. The balance of loans for previous years is not included as Federal awards expended because the lender accounts for the prior balances.

(d) **Prior loan and loan guarantees (loans).** Loans, the proceeds of which were received and expended in prior-years, are not considered Federal awards expended under this part when the laws, regulations, and the provisions of contracts or grant agreements pertaining to such loans impose no continuing compliance requirements other than to repay the loans.

(e) **Endowment funds.** The cumulative balance of Federal awards for endowment funds which are federally restricted are considered awards expended in each year in which the funds are still restricted.

(f) **Free rent.** Free rent received by itself is not considered a Federal award expended under this part. However, free rent received as part of an award to carry out a Federal program shall be included in determining Federal awards expended and subject to audit under this part.

(g) **Valuing non-cash assistance.** Federal non-cash assistance, such as free rent, food stamps, food commodities, donated property, or donated surplus property, shall be valued at fair market value at the time of receipt or the assessed value provided by the Federal agency.

(h) **Medicare.** Medicare payments to a non-Federal entity for providing patient care services to Medicare eligible individuals are not considered Federal awards expended under this part.

(i) **Medicaid.** Medicaid payments to a subrecipient for providing patient care services to Medicaid eligible individuals are not considered Federal awards expended under this part unless a State requires the funds to be treated as Federal awards expended because reimbursement is on a cost-reimbursement basis.

(j) **Certain loans provided by the National Credit Union Administration.** For purposes of this part, loans made from the National Credit Union Share Insurance Fund and the Central Liquidity Facility that are funded by contributions from insured institutions are not considered Federal awards expended.

#### **§ \_\_.210 Subrecipient and vendor determinations.**

(a) **General.** An auditee may be a recipient, a subrecipient, and a vendor. Federal awards expended as a recipient or a subrecipient would be subject to audit under this part. The payments received for goods or services provided as a vendor would not be considered Federal awards. The guidance in paragraphs (b) and (c) of this section should be considered in determining whether payments constitute a Federal award or a payment for goods and services.

(b) **Federal award.** Characteristics indicative of a Federal award received by a subrecipient are when the organization:

- (1) Determines who is eligible to receive what Federal financial assistance;
- (2) Has its performance measured against whether the objectives of the Federal program are met;
- (3) Has responsibility for programmatic decision making;
- (4) Has responsibility for adherence to applicable Federal program compliance requirements; and
- (5) Uses the Federal funds to carry out a program of the organization as compared to providing goods or services for a program of the pass-through entity.

(c) **Payment for goods and services.** Characteristics indicative of a payment for goods and services received by a vendor are when the organization:

- (1) Provides the goods and services within normal business operations;
- (2) Provides similar goods or services to many different purchasers;
- (3) Operates in a competitive environment;
- (4) Provides goods or services that are ancillary to the operation of the Federal program; and
- (5) Is not subject to compliance requirements of the Federal program.

(d) **Use of judgment in making determination.** There may be unusual circumstances or exceptions to the listed characteristics. In making the determination of whether a subrecipient or vendor relationship exists, the substance of the relationship is more important than the form of the agreement. It is not expected that all of the characteristics will be present and judgment should be used in determining whether an entity is a subrecipient or vendor.

(e) **For-profit subrecipient.** Since this part does not apply to for-profit subrecipients, the pass-through entity is responsible for establishing requirements, as necessary, to ensure compliance by for-profit subrecipients. The contract with the for-profit subrecipient should describe applicable compliance requirements and the for-profit subrecipient's compliance responsibility. Methods to ensure compliance for Federal awards made to for-profit subrecipients may include pre-award audits, monitoring during the contract, and post-award audits.

(f) **Compliance responsibility for vendors.** In most cases, the auditee's compliance responsibility for vendors is only to ensure that the procurement, receipt, and payment for goods and services comply with laws, regulations, and the provisions of contracts or grant agreements. Program compliance requirements normally do not pass through to vendors. However, the auditee is responsible for ensuring compliance for vendor transactions which are structured such that the vendor is responsible for program compliance or the vendor's records must be reviewed to determine program compliance. Also, when these vendor transactions relate to a major program, the scope of the audit shall include

determining whether these transactions are in compliance with laws, regulations, and the provisions of contracts or grant agreements.

**§ \_\_.215 Relation to other audit requirements.**

(a) **Audit under this part in lieu of other audits.** An audit made in accordance with this part shall be in lieu of any financial audit required under individual Federal awards. To the extent this audit meets a Federal agency's needs, it shall rely upon and use such audits. The provisions of this part neither limit the authority of Federal agencies, including their Inspectors General, or GAO to conduct or arrange for additional audits (e.g., financial audits, performance audits, evaluations, inspections, or reviews) nor authorize any auditee to constrain Federal agencies from carrying out additional audits. Any additional audits shall be planned and performed in such a way as to build upon work performed by other auditors.

(b) **Federal agency to pay for additional audits.** A Federal agency that conducts or contracts for additional audits shall, consistent with other applicable laws and regulations, arrange for funding the full cost of such additional audits.

(c) **Request for a program to be audited as a major program.** A Federal agency may request an auditee to have a particular Federal program audited as a major program in lieu of the Federal agency conducting or arranging for the additional audits. To allow for planning, such requests should be made at least 180 days prior to the end of the fiscal year to be audited. The auditee, after consultation with its auditor, should promptly respond to such request by informing the Federal agency whether the program would otherwise be audited as a major program using the risk-based audit approach described in § \_\_.520 and, if not, the estimated incremental cost. The Federal agency shall then promptly confirm to the auditee whether it wants the program audited as a major program. If the program is to be audited as a major program based upon this Federal agency request, and the Federal agency agrees to pay the full incremental costs, then the auditee shall have the program audited as a major program. A pass-through entity may use the provisions of this paragraph for a subrecipient.

**§ \_\_.220 Frequency of audits.**

Except for the provisions for biennial audits provided in paragraphs (a) and (b) of this section, audits required by this part shall be performed annually. Any biennial audit shall cover both years within the biennial period.

(a) A State or local government that is required by constitution or statute, in effect on January 1, 1987, to undergo its audits less frequently than annually, is permitted to undergo its audits pursuant to this part biennially. This requirement must still be in effect for the biennial period under audit.

(b) Any non-profit organization that had biennial audits for all biennial periods ending between July 1, 1992, and January 1, 1995, is permitted to undergo its audits pursuant to this part biennially.

**§ \_\_.225 Sanctions.**

No audit costs may be charged to Federal awards when audits required by this part have not been made or have been made but not in accordance with this part. In cases of continued inability or



unwillingness to have an audit conducted in accordance with this part, Federal agencies and pass-through entities shall take appropriate action using sanctions such as:

- (a) Withholding a percentage of Federal awards until the audit is completed satisfactorily;
- (b) Withholding or disallowing overhead costs;
- (c) Suspending Federal awards until the audit is conducted; or
- (d) Terminating the Federal award.

**§ \_\_.230 Audit costs.**

(a) **Allowable costs.** Unless prohibited by law, the cost of audits made in accordance with the provisions of this part are allowable charges to Federal awards. The charges may be considered a direct cost or an allocated indirect cost, as determined in accordance with the provisions of applicable OMB cost principles circulars, the Federal Acquisition Regulation (FAR) (48 CFR parts 30 and 31), or other applicable cost principles or regulations.

(b) **Unallowable costs.** A non-Federal entity shall not charge the following to a Federal award:

(1) The cost of any audit under the Single Audit Act Amendments of 1996 (31 U.S.C. 7501 **et seq.**) not conducted in accordance with this part.

(2) The cost of auditing a non-Federal entity which has Federal awards expended of less than \$300,000 per year and is thereby exempted under § \_\_.200(d) from having an audit conducted under this part. However, this does not prohibit a pass-through entity from charging Federal awards for the cost of limited scope audits to monitor its subrecipients in accordance with § \_\_.400(d)(3), provided the subrecipient does not have a single audit. For purposes of this part, limited scope audits only include agreed-upon procedures engagements conducted in accordance with either the AICPA's generally accepted auditing standards or attestation standards, that are paid for and arranged by a pass-through entity and address only one or more of the following types of compliance requirements: activities allowed or unallowed; allowable costs/cost principles; eligibility; matching, level of effort, earmarking; and, reporting.

**§ \_\_.235 Program-specific audits.**

(a) **Program-specific audit guide available.** In many cases, a program-specific audit guide will be available to provide specific guidance to the auditor with respect to internal control, compliance requirements, suggested audit procedures, and audit reporting requirements. The auditor should contact the Office of Inspector General of the Federal agency to determine whether such a guide is available. When a current program-specific audit guide is available, the auditor shall follow GAGAS and the guide when performing a program-specific audit.

(b) **Program-specific audit guide not available.** (1) When a program-specific audit guide is not available, the auditee and auditor shall have basically the same responsibilities for the Federal program as they would have for an audit of a major program in a single audit.

(2) The auditee shall prepare the financial statement(s) for the Federal program that includes, at a minimum, a schedule of expenditures of Federal awards for the program and notes that describe the significant accounting policies used in preparing the schedule, a summary schedule of prior audit findings consistent with the requirements of § \_\_\_.315(b), and a corrective action plan consistent with the requirements of § \_\_\_.315(c).

(3) The auditor shall:

(i) Perform an audit of the financial statement(s) for the Federal program in accordance with GAGAS;

(ii) Obtain an understanding of internal control and perform tests of internal control over the Federal program consistent with the requirements of § \_\_\_.500(c) for a major program;

(iii) Perform procedures to determine whether the auditee has complied with laws, regulations, and the provisions of contracts or grant agreements that could have a direct and material effect on the Federal program consistent with the requirements of § \_\_\_.500(d) for a major program; and

(iv) Follow up on prior audit findings, perform procedures to assess the reasonableness of the summary schedule of prior audit findings prepared by the auditee, and report, as a current year audit finding, when the auditor concludes that the summary schedule of prior audit findings materially misrepresents the status of any prior audit finding in accordance with the requirements of § \_\_\_.500(e).

(4) The auditor's report(s) may be in the form of either combined or separate reports and may be organized differently from the manner presented in this section. The auditor's report(s) shall state that the audit was conducted in accordance with this part and include the following:

(i) An opinion (or disclaimer of opinion) as to whether the financial statement(s) of the Federal program is presented fairly in all material respects in conformity with the stated accounting policies;

(ii) A report on internal control related to the Federal program, which shall describe the scope of testing of internal control and the results of the tests;

(iii) A report on compliance which includes an opinion (or disclaimer of opinion) as to whether the auditee complied with laws, regulations, and the provisions of contracts or grant agreements which could have a direct and material effect on the Federal program; and

(iv) A schedule of findings and questioned costs for the Federal program that includes a summary of the auditor's results relative to the Federal program in a format consistent with § \_\_\_.505(d)(1) and findings and questioned costs consistent with the requirements of § \_\_\_.505(d)(3).

**(c) Report submission for program-specific audits.**

(1) The audit shall be completed and the reporting required by paragraph (c)(2) or (c)(3) of this section submitted within the earlier of 30 days after receipt of the auditor's report(s), or nine months after the end of the audit period, unless a longer period is agreed to in advance by the Federal agency that provided the funding or a different period is specified in a program-specific audit guide.

(However, for fiscal years beginning on or before June 30, 1998, the audit shall be completed and the

required reporting shall be submitted within the earlier of 30 days after receipt of the auditor's report(s), or 13 months after the end of the audit period, unless a different period is specified in a program-specific audit guide.) Unless restricted by law or regulation, the auditee shall make report copies available for public inspection.

(2) When a program-specific audit guide is available, the auditee shall submit to the Federal clearinghouse designated by OMB the data collection form prepared in accordance with § \_\_.320(b), as applicable to a program-specific audit, and the reporting required by the program-specific audit guide to be retained as an archival copy. Also, the auditee shall submit to the Federal awarding agency or pass-through entity the reporting required by the program-specific audit guide.

(3) When a program-specific audit guide is not available, the reporting package for a program-specific audit shall consist of the financial statement(s) of the Federal program, a summary schedule of prior audit findings, and a corrective action plan as described in paragraph (b)(2) of this section, and the auditor's report(s) described in paragraph (b)(4) of this section. The data collection form prepared in accordance with § \_\_.320(b), as applicable to a program-specific audit, and one copy of this reporting package shall be submitted to the Federal clearinghouse designated by OMB to be retained as an archival copy. Also, when the schedule of findings and questioned costs disclosed audit findings or the summary schedule of prior audit findings reported the status of any audit findings, the auditee shall submit one copy of the reporting package to the Federal clearinghouse on behalf of the Federal awarding agency, or directly to the pass-through entity in the case of a subrecipient. Instead of submitting the reporting package to the pass-through entity, when a subrecipient is not required to submit a reporting package to the pass-through entity, the subrecipient shall provide written notification to the pass-through entity, consistent with the requirements of § \_\_.320(e)(2). A subrecipient may submit a copy of the reporting package to the pass-through entity to comply with this notification requirement.

(d) **Other sections of this part may apply.** Program-specific audits are subject to § \_\_.100 through § \_\_.215(b), § \_\_.220 through § \_\_.230, § \_\_.300 through § \_\_.305, § \_\_.315, § \_\_.320(f) through § \_\_.320(j), § \_\_.400 through § \_\_.405, § \_\_.510 through § \_\_.515, and other referenced provisions of this part unless contrary to the provisions of this section, a program-specific audit guide, or program laws and regulations.

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## **Subpart C--Auditees**

### **§ \_\_.300 Auditee responsibilities.**

The auditee shall:

(a) Identify, in its accounts, all Federal awards received and expended and the Federal programs under which they were received. Federal program and award identification shall include, as applicable, the CFDA title and number, award number and year, name of the Federal agency, and name of the pass-through entity.

(b) Maintain internal control over Federal programs that provides reasonable assurance that the auditee is managing Federal awards in compliance with laws, regulations, and the provisions of contracts or grant agreements that could have a material effect on each of its Federal programs.

(c) Comply with laws, regulations, and the provisions of contracts or grant agreements related to each of its Federal programs.

(d) Prepare appropriate financial statements, including the schedule of expenditures of Federal awards in accordance with § \_\_\_.310.

(e) Ensure that the audits required by this part are properly performed and submitted when due. When extensions to the report submission due date required by § \_\_\_.320(a) are granted by the cognizant or oversight agency for audit, promptly notify the Federal clearinghouse designated by OMB and each pass-through entity providing Federal awards of the extension.

(f) Follow up and take corrective action on audit findings, including preparation of a summary schedule of prior audit findings and a corrective action plan in accordance with § \_\_\_.315(b) and § \_\_\_.315(c), respectively.

**§ \_\_\_.305 Auditor selection.**

(a) **Auditor procurement.** In procuring audit services, auditees shall follow the procurement standards prescribed by the Grants Management Common Rule (hereinafter referred to as the "A-102 Common Rule") published March 11, 1988 and amended April 19, 1995 [insert appropriate CFR citation], Circular A-110, "Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals and Other Non-Profit Organizations," or the FAR (48 CFR part 42), as applicable (OMB Circulars are available from the Office of Administration, Publications Office, room 2200, New Executive Office Building, Washington, DC 20503). Whenever possible, auditees shall make positive efforts to utilize small businesses, minority-owned firms, and women's business enterprises, in procuring audit services as stated in the A-102 Common Rule, OMB Circular A-110, or the FAR (48 CFR part 42), as applicable. In requesting proposals for audit services, the objectives and scope of the audit should be made clear. Factors to be considered in evaluating each proposal for audit services include the responsiveness to the request for proposal, relevant experience, availability of staff with professional qualifications and technical abilities, the results of external quality control reviews, and price.

(b) **Restriction on auditor preparing indirect cost proposals.** An auditor who prepares the indirect cost proposal or cost allocation plan may not also be selected to perform the audit required by this part when the indirect costs recovered by the auditee during the prior year exceeded \$1 million. This restriction applies to the base year used in the preparation of the indirect cost proposal or cost allocation plan and any subsequent years in which the resulting indirect cost agreement or cost allocation plan is used to recover costs. To minimize any disruption in existing contracts for audit services, this paragraph applies to audits of fiscal years beginning after June 30, 1998.

(c) **Use of Federal auditors.** Federal auditors may perform all or part of the work required under this part if they comply fully with the requirements of this part.

**§ \_\_.310 Financial statements.**

(a) **Financial statements.** The auditee shall prepare financial statements that reflect its financial position, results of operations or changes in net assets, and, where appropriate, cash flows for the fiscal year audited. The financial statements shall be for the same organizational unit and fiscal year that is chosen to meet the requirements of this part. However, organization-wide financial statements may also include departments, agencies, and other organizational units that have separate audits in accordance with § \_\_.500(a) and prepare separate financial statements.

(b) **Schedule of expenditures of Federal awards.** The auditee shall also prepare a schedule of expenditures of Federal awards for the period covered by the auditee's financial statements. While not required, the auditee may choose to provide information requested by Federal awarding agencies and pass-through entities to make the schedule easier to use. For example, when a Federal program has multiple award years, the auditee may list the amount of Federal awards expended for each award year separately. At a minimum, the schedule shall:

(1) List individual Federal programs by Federal agency. For Federal programs included in a cluster of programs, list individual Federal programs within a cluster of programs. For R&D, total Federal awards expended shall be shown either by individual award or by Federal agency and major subdivision within the Federal agency. For example, the National Institutes of Health is a major subdivision in the Department of Health and Human Services.

(2) For Federal awards received as a subrecipient, the name of the pass-through entity and identifying number assigned by the pass-through entity shall be included.

(3) Provide total Federal awards expended for each individual Federal program and the CFDA number or other identifying number when the CFDA information is not available.

(4) Include notes that describe the significant accounting policies used in preparing the schedule.

(5) To the extent practical, pass-through entities should identify in the schedule the total amount provided to subrecipients from each Federal program.

(6) Include, in either the schedule or a note to the schedule, the value of the Federal awards expended in the form of non-cash assistance, the amount of insurance in effect during the year, and loans or loan guarantees outstanding at year end. While not required, it is preferable to present this information in the schedule.

**§ \_\_.315 Audit findings follow-up.**

(a) **General.** The auditee is responsible for follow-up and corrective action on all audit findings. As part of this responsibility, the auditee shall prepare a summary schedule of prior audit findings. The auditee shall also prepare a corrective action plan for current year audit findings. The summary schedule of prior audit findings and the corrective action plan shall include the reference numbers the auditor assigns to audit findings under § \_\_.510(c). Since the summary schedule may include audit findings from multiple years, it shall include the fiscal year in which the finding initially occurred.

(b) **Summary schedule of prior audit findings.** The summary schedule of prior audit findings shall report the status of all audit findings included in the prior audit's schedule of findings and questioned costs relative to Federal awards. The summary schedule shall also include audit findings reported in the prior audit's summary schedule of prior audit findings except audit findings listed as corrected in accordance with paragraph (b)(1) of this section, or no longer valid or not warranting further action in accordance with paragraph (b)(4) of this section.

(1) When audit findings were fully corrected, the summary schedule need only list the audit findings and state that corrective action was taken.

(2) When audit findings were not corrected or were only partially corrected, the summary schedule shall describe the planned corrective action as well as any partial corrective action taken.

(3) When corrective action taken is significantly different from corrective action previously reported in a corrective action plan or in the Federal agency's or pass-through entity's management decision, the summary schedule shall provide an explanation.

(4) When the auditee believes the audit findings are no longer valid or do not warrant further action, the reasons for this position shall be described in the summary schedule. A valid reason for considering an audit finding as not warranting further action is that all of the following have occurred:

(i) Two years have passed since the audit report in which the finding occurred was submitted to the Federal clearinghouse;

(ii) The Federal agency or pass-through entity is not currently following up with the auditee on the audit finding; and

(iii) A management decision was not issued.

(c) **Corrective action plan.** At the completion of the audit, the auditee shall prepare a corrective action plan to address each audit finding included in the current year auditor's reports. The corrective action plan shall provide the name(s) of the contact person(s) responsible for corrective action, the corrective action planned, and the anticipated completion date. If the auditee does not agree with the audit findings or believes corrective action is not required, then the corrective action plan shall include an explanation and specific reasons.

#### **§ \_\_.320 Report submission.**

(a) **General.** The audit shall be completed and the data collection form described in paragraph (b) of this section and reporting package described in paragraph (c) of this section shall be submitted within the earlier of 30 days after receipt of the auditor's report(s), or nine months after the end of the audit period, unless a longer period is agreed to in advance by the cognizant or oversight agency for audit. (However, for fiscal years beginning on or before June 30, 1998, the audit shall be completed and the data collection form and reporting package shall be submitted within the earlier of 30 days after receipt of the auditor's report(s), or 13 months after the end of the audit period.) Unless restricted by law or regulation, the auditee shall make copies available for public inspection.

(b) **Data Collection.** (1) The auditee shall submit a data collection form which states whether the audit was completed in accordance with this part and provides information about the auditee, its Federal programs, and the results of the audit. The form shall be approved by OMB, available from the Federal clearinghouse designated by OMB, and include data elements similar to those presented in this paragraph. A senior level representative of the auditee (e.g., State controller, director of finance, chief executive officer, or chief financial officer) shall sign a statement to be included as part of the form certifying that: the auditee complied with the requirements of this part, the form was prepared in accordance with this part (and the instructions accompanying the form), and the information included in the form, in its entirety, are accurate and complete.

(2) The data collection form shall include the following data elements:

(i) The type of report the auditor issued on the financial statements of the auditee (i.e., unqualified opinion, qualified opinion, adverse opinion, or disclaimer of opinion).

(ii) Where applicable, a statement that reportable conditions in internal control were disclosed by the audit of the financial statements and whether any such conditions were material weaknesses.

(iii) A statement as to whether the audit disclosed any noncompliance which is material to the financial statements of the auditee.

(iv) Where applicable, a statement that reportable conditions in internal control over major programs were disclosed by the audit and whether any such conditions were material weaknesses.

(v) The type of report the auditor issued on compliance for major programs (i.e., unqualified opinion, qualified opinion, adverse opinion, or disclaimer of opinion).

(vi) A list of the Federal awarding agencies which will receive a copy of the reporting package pursuant to § \_\_\_.320(d)(2) of OMB Circular A-133.

(vii) A yes or no statement as to whether the auditee qualified as a low-risk auditee under § \_\_\_.530 of OMB Circular A-133.

(viii) The dollar threshold used to distinguish between Type A and Type B programs as defined in § \_\_\_.520(b) of OMB Circular A-133.

(ix) The **Catalog of Federal Domestic Assistance** (CFDA) number for each Federal program, as applicable.

(x) The name of each Federal program and identification of each major program. Individual programs within a cluster of programs should be listed in the same level of detail as they are listed in the schedule of expenditures of Federal awards.

(xi) The amount of expenditures in the schedule of expenditures of Federal awards associated with each Federal program.

(xii) For each Federal program, a yes or no statement as to whether there are audit findings in each of the following types of compliance requirements and the total amount of any questioned costs:

(A) Activities allowed or unallowed.

(B) Allowable costs/cost principles.

(C) Cash management.

(D) Davis-Bacon Act.

(E) Eligibility.

(F) Equipment and real property management.

(G) Matching, level of effort, earmarking.

(H) Period of availability of Federal funds.

(I) Procurement and suspension and debarment.

(J) Program income.

(K) Real property acquisition and relocation assistance.

(L) Reporting.

(M) Subrecipient monitoring.

(N) Special tests and provisions.

(xiii) Auditee Name, Employer Identification Number(s), Name and Title of Certifying Official, Telephone Number, Signature, and Date.

(xiv) Auditor Name, Name and Title of Contact Person, Auditor Address, Auditor Telephone Number, Signature, and Date.

(xv) Whether the auditee has either a cognizant or oversight agency for audit.

(xvi) The name of the cognizant or oversight agency for audit determined in accordance with § \_\_.400(a) and § \_\_.400(b), respectively.

(3) Using the information included in the reporting package described in paragraph (c) of this section, the auditor shall complete the applicable sections of the form. The auditor shall sign a statement to be included as part of the data collection form that indicates, at a minimum, the source of the information included in the form, the auditor's responsibility for the information, that the form is not a substitute for the reporting package described in paragraph (c) of this section, and that the content of the form is limited to the data elements prescribed by OMB.

**(c) Reporting package.** The reporting package shall include the:

(1) Financial statements and schedule of expenditures of Federal awards discussed in § \_\_.310(a) and § \_\_.310(b), respectively;



(2) Summary schedule of prior audit findings discussed in §\_\_\_\_.315(b);

(3) Auditor's report(s) discussed in §\_\_\_\_.505; and

(4) Corrective action plan discussed in §\_\_\_\_.315(c).

(d) **Submission to clearinghouse.** All auditees shall submit to the Federal clearinghouse designated by OMB the data collection form described in paragraph (b) of this section and one copy of the reporting package described in paragraph (c) of this section for:

(1) The Federal clearinghouse to retain as an archival copy; and

(2) Each Federal awarding agency when the schedule of findings and questioned costs disclosed audit findings relating to Federal awards that the Federal awarding agency provided directly or the summary schedule of prior audit findings reported the status of any audit findings relating to Federal awards that the Federal awarding agency provided directly.

(e) **Additional submission by subrecipients.** (1) In addition to the requirements discussed in paragraph (d) of this section, auditees that are also subrecipients shall submit to each pass-through entity one copy of the reporting package described in paragraph (c) of this section for each pass-through entity when the schedule of findings and questioned costs disclosed audit findings relating to Federal awards that the pass-through entity provided or the summary schedule of prior audit findings reported the status of any audit findings relating to Federal awards that the pass-through entity provided.

(2) Instead of submitting the reporting package to a pass-through entity, when a subrecipient is not required to submit a reporting package to a pass-through entity pursuant to paragraph (e)(1) of this section, the subrecipient shall provide written notification to the pass-through entity that: an audit of the subrecipient was conducted in accordance with this part (including the period covered by the audit and the name, amount, and CFDA number of the Federal award(s) provided by the pass-through entity); the schedule of findings and questioned costs disclosed no audit findings relating to the Federal award(s) that the pass-through entity provided; and, the summary schedule of prior audit findings did not report on the status of any audit findings relating to the Federal award(s) that the pass-through entity provided. A subrecipient may submit a copy of the reporting package described in paragraph (c) of this section to a pass-through entity to comply with this notification requirement.

(f) **Requests for report copies.** In response to requests by a Federal agency or pass-through entity, auditees shall submit the appropriate copies of the reporting package described in paragraph (c) of this section and, if requested, a copy of any management letters issued by the auditor.

(g) **Report retention requirements.** Auditees shall keep one copy of the data collection form described in paragraph (b) of this section and one copy of the reporting package described in paragraph (c) of this section on file for three years from the date of submission to the Federal clearinghouse designated by OMB. Pass-through entities shall keep subrecipients' submissions on file for three years from date of receipt.

(h) **Clearinghouse responsibilities.** The Federal clearinghouse designated by OMB shall distribute the reporting packages received in accordance with paragraph (d)(2) of this section and

§ \_\_.235(c)(3) to applicable Federal awarding agencies, maintain a data base of completed audits, provide appropriate information to Federal agencies, and follow up with known auditees which have not submitted the required data collection forms and reporting packages.

(i) **Clearinghouse address.** The address of the Federal clearinghouse currently designated by OMB is Federal Audit Clearinghouse, Bureau of the Census, 1201 E. 10th Street, Jeffersonville, IN 47132.

(j) **Electronic filing.** Nothing in this part shall preclude electronic submissions to the Federal clearinghouse in such manner as may be approved by OMB. With OMB approval, the Federal clearinghouse may pilot test methods of electronic submissions.

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#### **Subpart D--Federal Agencies and Pass-Through Entities**

##### **§ \_\_.400 Responsibilities.**

(a) **Cognizant agency for audit responsibilities.** Recipients expending more than \$25 million a year in Federal awards shall have a cognizant agency for audit. The designated cognizant agency for audit shall be the Federal awarding agency that provides the predominant amount of direct funding to a recipient unless OMB makes a specific cognizant agency for audit assignment. To provide for continuity of cognizance, the determination of the predominant amount of direct funding shall be based upon direct Federal awards expended in the recipient's fiscal years ending in 1995, 2000, 2005, and every fifth year thereafter. For example, audit cognizance for periods ending in 1997 through 2000 will be determined based on Federal awards expended in 1995. (However, for States and local governments that expend more than \$25 million a year in Federal awards and have previously assigned cognizant agencies for audit, the requirements of this paragraph are not effective until fiscal years beginning after June 30, 2000.) Notwithstanding the manner in which audit cognizance is determined, a Federal awarding agency with cognizance for an auditee may reassign cognizance to another Federal awarding agency which provides substantial direct funding and agrees to be the cognizant agency for audit. Within 30 days after any reassignment, both the old and the new cognizant agency for audit shall notify the auditee, and, if known, the auditor of the reassignment. The cognizant agency for audit shall:

(1) Provide technical audit advice and liaison to auditees and auditors.

(2) Consider auditee requests for extensions to the report submission due date required by § \_\_.320(a). The cognizant agency for audit may grant extensions for good cause.

(3) Obtain or conduct quality control reviews of selected audits made by non-Federal auditors, and provide the results, when appropriate, to other interested organizations.

(4) Promptly inform other affected Federal agencies and appropriate Federal law enforcement officials of any direct reporting by the auditee or its auditor of irregularities or illegal acts, as required by GAGAS or laws and regulations.

(5) Advise the auditor and, where appropriate, the auditee of any deficiencies found in the audits when the deficiencies require corrective action by the auditor. When advised of deficiencies, the auditee shall work with the auditor to take corrective action. If corrective action is not taken, the

cognizant agency for audit shall notify the auditor, the auditee, and applicable Federal awarding agencies and pass-through entities of the facts and make recommendations for follow-up action. Major inadequacies or repetitive substandard performance by auditors shall be referred to appropriate State licensing agencies and professional bodies for disciplinary action.

(6) Coordinate, to the extent practical, audits or reviews made by or for Federal agencies that are in addition to the audits made pursuant to this part, so that the additional audits or reviews build upon audits performed in accordance with this part.

(7) Coordinate a management decision for audit findings that affect the Federal programs of more than one agency.

(8) Coordinate the audit work and reporting responsibilities among auditors to achieve the most cost-effective audit.

(9) For biennial audits permitted under § \_\_\_.220, consider auditee requests to qualify as a low-risk auditee under § \_\_\_.530(a).

**(b) Oversight agency for audit responsibilities.** An auditee which does not have a designated cognizant agency for audit will be under the general oversight of the Federal agency determined in accordance with § \_\_\_.105. The oversight agency for audit:

(1) Shall provide technical advice to auditees and auditors as requested.

(2) May assume all or some of the responsibilities normally performed by a cognizant agency for audit.

**(c) Federal awarding agency responsibilities.** The Federal awarding agency shall perform the following for the Federal awards it makes:

(1) Identify Federal awards made by informing each recipient of the CFDA title and number, award name and number, award year, and if the award is for R&D. When some of this information is not available, the Federal agency shall provide information necessary to clearly describe the Federal award.

(2) Advise recipients of requirements imposed on them by Federal laws, regulations, and the provisions of contracts or grant agreements.

(3) Ensure that audits are completed and reports are received in a timely manner and in accordance with the requirements of this part.

(4) Provide technical advice and counsel to auditees and auditors as requested.

(5) Issue a management decision on audit findings within six months after receipt of the audit report and ensure that the recipient takes appropriate and timely corrective action.

(6) Assign a person responsible for providing annual updates of the compliance supplement to OMB.

(d) **Pass-through entity responsibilities.** A pass-through entity shall perform the following for the Federal awards it makes:

(1) Identify Federal awards made by informing each subrecipient of CFDA title and number, award name and number, award year, if the award is R&D, and name of Federal agency. When some of this information is not available, the pass-through entity shall provide the best information available to describe the Federal award.

(2) Advise subrecipients of requirements imposed on them by Federal laws, regulations, and the provisions of contracts or grant agreements as well as any supplemental requirements imposed by the pass-through entity.

(3) Monitor the activities of subrecipients as necessary to ensure that Federal awards are used for authorized purposes in compliance with laws, regulations, and the provisions of contracts or grant agreements and that performance goals are achieved.

(4) Ensure that subrecipients expending \$300,000 or more in Federal awards during the subrecipient's fiscal year have met the audit requirements of this part for that fiscal year.

(5) Issue a management decision on audit findings within six months after receipt of the subrecipient's audit report and ensure that the subrecipient takes appropriate and timely corrective action.

(6) Consider whether subrecipient audits necessitate adjustment of the pass-through entity's own records.

(7) Require each subrecipient to permit the pass-through entity and auditors to have access to the records and financial statements as necessary for the pass-through entity to comply with this part.

**§ \_\_.405 Management decision.**

(a) **General.** The management decision shall clearly state whether or not the audit finding is sustained, the reasons for the decision, and the expected auditee action to repay disallowed costs, make financial adjustments, or take other action. If the auditee has not completed corrective action, a timetable for follow-up should be given. Prior to issuing the management decision, the Federal agency or pass-through entity may request

additional information or documentation from the auditee, including a request for auditor assurance related to the documentation, as a way of mitigating disallowed costs. The management decision should describe any appeal process available to the auditee.

(b) **Federal agency.** As provided in § \_\_.400(a)(7), the cognizant agency for audit shall be responsible for coordinating a management decision for audit findings that affect the programs of more than one Federal agency. As provided in § \_\_.400(c)(5), a Federal awarding agency is responsible for issuing a management decision for findings that relate to Federal awards it makes to recipients. Alternate arrangements may be made on a case-by-case basis by agreement among the Federal agencies concerned.

(c) **Pass-through entity.** As provided in § \_\_\_.400(d)(5), the pass-through entity shall be responsible for making the management decision for audit findings that relate to Federal awards it makes to subrecipients.

(d) **Time requirements.** The entity responsible for making the management decision shall do so within six months of receipt of the audit report. Corrective action should be initiated within six months after receipt of the audit report and proceed as rapidly as possible.

(e) **Reference numbers.** Management decisions shall include the reference numbers the auditor assigned to each audit finding in accordance with § \_\_\_.510(c).

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## Subpart E--Auditors

### § \_\_\_.500 Scope of audit.

(a) **General.** The audit shall be conducted in accordance with GAGAS. The audit shall cover the entire operations of the auditee; or, at the option of the auditee, such audit shall include a series of audits that cover departments, agencies, and other organizational units which expended or otherwise administered Federal awards during such fiscal year, provided that each such audit shall encompass the financial statements and schedule of expenditures of Federal awards for each such department, agency, and other organizational unit, which shall be considered to be a non-Federal entity. The financial statements and schedule of expenditures of Federal awards shall be for the same fiscal year.

(b) **Financial statements.** The auditor shall determine whether the financial statements of the auditee are presented fairly in all material respects in conformity with generally accepted accounting principles. The auditor shall also determine whether the schedule of expenditures of Federal awards is presented fairly in all material respects in relation to the auditee's financial statements taken as a whole.

(c) **Internal control.** (1) In addition to the requirements of GAGAS, the auditor shall perform procedures to obtain an understanding of internal control over Federal programs sufficient to plan the audit to support a low assessed level of control risk for major programs.

(2) Except as provided in paragraph (c)(3) of this section, the auditor shall:

(i) Plan the testing of internal control over major programs to support a low assessed level of control risk for the assertions relevant to the compliance requirements for each major program; and

(ii) Perform testing of internal control as planned in paragraph (c)(2)(i) of this section.

(3) When internal control over some or all of the compliance requirements for a major program are likely to be ineffective in preventing or detecting noncompliance, the planning and performing of testing described in paragraph (c)(2) of this section are not required for those compliance requirements. However, the auditor shall report a reportable condition (including whether any such condition is a material weakness) in accordance with § \_\_\_.510, assess the related control risk at the maximum, and consider whether additional compliance tests are required because of ineffective internal control.

(d) **Compliance.** (1) In addition to the requirements of GAGAS, the auditor shall determine whether the auditee has complied with laws, regulations, and the provisions of contracts or grant agreements that may have a direct and material effect on each of its major programs.

(2) The principal compliance requirements applicable to most Federal programs and the compliance requirements of the largest Federal programs are included in the compliance supplement.

(3) For the compliance requirements related to Federal programs contained in the compliance supplement, an audit of these compliance requirements will meet the requirements of this part. Where there have been changes to the compliance requirements and the changes are not reflected in the compliance supplement, the auditor shall determine the current compliance requirements and modify the audit procedures accordingly. For those Federal programs not covered in the compliance supplement, the auditor should use the types of compliance requirements contained in the compliance supplement as guidance for identifying the types of compliance requirements to test, and determine the requirements governing the Federal program by reviewing the provisions of contracts and grant agreements and the laws and regulations referred to in such contracts and grant agreements.

(4) The compliance testing shall include tests of transactions and such other auditing procedures necessary to provide the auditor sufficient evidence to support an opinion on compliance.

(e) **Audit follow-up.** The auditor shall follow-up on prior audit findings, perform procedures to assess the reasonableness of the summary schedule of prior audit findings prepared by the auditee in accordance with § \_\_.315(b), and report, as a current year audit finding, when the auditor concludes that the summary schedule of prior audit findings materially misrepresents the status of any prior audit finding. The auditor shall perform audit follow-up procedures regardless of whether a prior audit finding relates to a major program in the current year.

(f) **Data Collection Form.** As required in § \_\_.320(b)(3), the auditor shall complete and sign specified sections of the data collection form.

#### § \_\_.505 Audit reporting.

The auditor's report(s) may be in the form of either combined or separate reports and may be organized differently from the manner presented in this section. The auditor's report(s) shall state that the audit was conducted in accordance with this part and include the following:

(a) An opinion (or disclaimer of opinion) as to whether the financial statements are presented fairly in all material respects in conformity with generally accepted accounting principles and an opinion (or disclaimer of opinion) as to whether the schedule of expenditures of Federal awards is presented fairly in all material respects in relation to the financial statements taken as a whole.

(b) A report on internal control related to the financial statements and major programs. This report shall describe the scope of testing of internal control and the results of the tests, and, where applicable, refer to the separate schedule of findings and questioned costs described in paragraph (d) of this section.

(c) A report on compliance with laws, regulations, and the provisions of contracts or grant agreements, noncompliance with which could have a material effect on the financial statements. This

report shall also include an opinion (or disclaimer of opinion) as to whether the auditee complied with laws, regulations, and the provisions of contracts or grant agreements which could have a direct and material effect on each major program, and, where applicable, refer to the separate schedule of findings and questioned costs described in paragraph **(d)** of this section.

(d) A schedule of findings and questioned costs which shall include the following three components:

(1) A summary of the auditor's results which shall include:

(i) The type of report the auditor issued on the financial statements of the auditee (i.e., unqualified opinion, qualified opinion, adverse opinion, or disclaimer of opinion);

(ii) Where applicable, a statement that reportable conditions in internal control were disclosed by the audit of the financial statements and whether any such conditions were material weaknesses;

(iii) A statement as to whether the audit disclosed any noncompliance which is material to the financial statements of the auditee;

(iv) Where applicable, a statement that reportable conditions in internal control over major programs were disclosed by the audit and whether any such conditions were material weaknesses;

(v) The type of report the auditor issued on compliance for major programs (i.e., unqualified opinion, qualified opinion, adverse opinion, or disclaimer of opinion);

(vi) A statement as to whether the audit disclosed any audit findings which the auditor is required to report under § \_\_.510(a);

(vii) An identification of major programs;

(viii) The dollar threshold used to distinguish between Type A and Type B programs, as described in § \_\_.520(b); and

(ix) A statement as to whether the auditee qualified as a low-risk auditee under § \_\_.530.

(2) Findings relating to the financial statements which are required to be reported in accordance with GAGAS.

(3) Findings and questioned costs for Federal awards which shall include audit findings as defined in § \_\_.510(a).

(i) Audit findings (e.g., internal control findings, compliance findings, questioned costs, or fraud) which relate to the same issue should be presented as a single audit finding. Where practical, audit findings should be organized by Federal agency or pass-through entity.

(ii) Audit findings which relate to both the financial statements and Federal awards, as reported under paragraphs **(d)(2)** and **(d)(3)** of this section, respectively, should be reported in both sections of the schedule. However, the reporting in one section of the schedule may be in summary form with a reference to a detailed reporting in the other section of the schedule.

**§\_\_\_.510 Audit findings.**

(a) **Audit findings reported.** The auditor shall report the following as audit findings in a schedule of findings and questioned costs:

(1) Reportable conditions in internal control over major programs. The auditor's determination of whether a deficiency in internal control is a reportable condition for the purpose of reporting an audit finding is in relation to a type of compliance requirement for a major program or an audit objective identified in the compliance supplement. The auditor shall identify reportable conditions which are individually or cumulatively material weaknesses.

(2) Material noncompliance with the provisions of laws, regulations, contracts, or grant agreements related to a major program. The auditor's determination of whether a noncompliance with the provisions of laws, regulations, contracts, or grant agreements is material for the purpose of reporting an audit finding is in relation to a type of compliance requirement for a major program or an audit objective identified in the compliance supplement.

(3) Known questioned costs which are greater than \$10,000 for a type of compliance requirement for a major program. Known questioned costs are those specifically identified by the auditor. In evaluating the effect of questioned costs on the opinion on compliance, the auditor considers the best estimate of total costs questioned (likely questioned costs), not just the questioned costs specifically identified (known questioned costs). The auditor shall also report known questioned costs when likely questioned costs are greater than \$10,000 for a type of compliance requirement for a major program. In reporting questioned costs, the auditor shall include information to provide proper perspective for judging the prevalence and consequences of the questioned costs.

(4) Known questioned costs which are greater than \$10,000 for a Federal program which is not audited as a major program. Except for audit follow-up, the auditor is not required under this part to perform audit procedures for such a Federal program; therefore, the auditor will normally not find questioned costs for a program which is not audited as a major program. However, if the auditor does become aware of questioned costs for a Federal program which is not audited as a major program (e.g., as part of audit follow-up or other audit procedures) and the known questioned costs are greater than \$10,000, then the auditor shall report this as an audit finding.

(5) The circumstances concerning why the auditor's report on compliance for major programs is other than an unqualified opinion, unless such circumstances are otherwise reported as audit findings in the schedule of findings and questioned costs for Federal awards.

(6) Known fraud affecting a Federal award, unless such fraud is otherwise reported as an audit finding in the schedule of findings and questioned costs for Federal awards. This paragraph does not require the auditor to make an additional reporting when the auditor confirms that the fraud was reported outside of the auditor's reports under the direct reporting requirements of GAGAS.

(7) Instances where the results of audit follow-up procedures disclosed that the summary schedule of prior audit findings prepared by the auditee in accordance with §\_\_\_.315(b) materially misrepresents the status of any prior audit finding.



(b) **Audit finding detail.** Audit findings shall be presented in sufficient detail for the auditee to prepare a corrective action plan and take corrective action and for Federal agencies and pass-through entities to arrive at a management decision. The following specific information shall be included, as applicable, in audit findings:

(1) Federal program and specific Federal award identification including the CFDA title and number, Federal award number and year, name of Federal agency, and name of the applicable pass-through entity. When information, such as the CFDA title and number or Federal award number, is not available, the auditor shall provide the best information available to describe the Federal award.

(2) The criteria or specific requirement upon which the audit finding is based, including statutory, regulatory, or other citation.

(3) The condition found, including facts that support the deficiency identified in the audit finding.

(4) Identification of questioned costs and how they were computed.

(5) Information to provide proper perspective for judging the prevalence and consequences of the audit findings, such as whether the audit findings represent an isolated instance or a systemic problem. Where appropriate, instances identified shall be related to the universe and the number of cases examined and be quantified in terms of dollar value.

(6) The possible asserted effect to provide sufficient information to the auditee and Federal agency, or pass-through entity in the case of a subrecipient, to permit them to determine the cause and effect to facilitate prompt and proper corrective action.

(7) Recommendations to prevent future occurrences of the deficiency identified in the audit finding.

(8) Views of responsible officials of the auditee when there is disagreement with the audit findings, to the extent practical.

(c) **Reference numbers.** Each audit finding in the schedule of findings and questioned costs shall include a reference number to allow for easy referencing of the audit findings during follow-up.

#### **§\_\_\_.515 Audit working papers.**

(a) **Retention of working papers.** The auditor shall retain working papers and reports for a minimum of three years after the date of issuance of the auditor's report(s) to the auditee, unless the auditor is notified in writing by the cognizant agency for audit, oversight agency for audit, or pass-through entity to extend the retention period. When the auditor is aware that the Federal awarding agency, pass-through entity, or auditee is contesting an audit finding, the auditor shall contact the parties contesting the audit finding for guidance prior to destruction of the working papers and reports.

(b) **Access to working papers.** Audit working papers shall be made available upon request to the cognizant or oversight agency for audit or its designee, a Federal agency providing direct or indirect funding, or GAO at the completion of the audit, as part of a quality review, to resolve audit findings, or to carry out oversight responsibilities consistent with the purposes of this part. Access to working

papers includes the right of Federal agencies to obtain copies of working papers, as is reasonable and necessary.

**§\_\_\_.520 Major program determination.**

(a) **General.** The auditor shall use a risk-based approach to determine which Federal programs are major programs. This risk-based approach shall include consideration of: Current and prior audit experience, oversight by Federal agencies and pass-through entities, and the inherent risk of the Federal program. The process in paragraphs (b) through (i) of this section shall be followed.

(b) **Step 1.** (1) The auditor shall identify the larger Federal programs, which shall be labeled Type A programs. Type A programs are defined as Federal programs with Federal awards expended during the audit period exceeding the larger of:

(i) \$300,000 or three percent (.03) of total Federal awards expended in the case of an auditee for which total Federal awards expended equal or exceed \$300,000 but are less than or equal to \$100 million.

(ii) \$3 million or three-tenths of one percent (.003) of total Federal awards expended in the case of an auditee for which total Federal awards expended exceed \$100 million but are less than or equal to \$10 billion.

(iii) \$30 million or 15 hundredths of one percent (.0015) of total Federal awards expended in the case of an auditee for which total Federal awards expended exceed \$10 billion.

(2) Federal programs not labeled Type A under paragraph (b)(1) of this section shall be labeled Type B programs.

(3) The inclusion of large loan and loan guarantees (loans) should not result in the exclusion of other programs as Type A programs. When a Federal program providing loans significantly affects the number or size of Type A programs, the auditor shall consider this Federal program as a Type A program and exclude its values in determining other Type A programs.

(4) For biennial audits permitted under §\_\_\_.220, the determination of Type A and Type B programs shall be based upon the Federal awards expended during the two-year period.

(c) **Step 2.** (1) The auditor shall identify Type A programs which are low-risk. For a Type A program to be considered low-risk, it shall have been audited as a major program in at least one of the two most recent audit periods (in the most recent audit period in the case of a biennial audit), and, in the most recent audit period, it shall have had no audit findings under §\_\_\_.510(a). However, the auditor may use judgment and consider that audit findings from questioned costs under §\_\_\_.510(a)(3) and §\_\_\_.510(a)(4), fraud under §\_\_\_.510(a)(6), and audit follow-up for the summary schedule of prior audit findings under §\_\_\_.510(a)(7) do not preclude the Type A program from being low-risk. The auditor shall consider: the criteria in §\_\_\_.525(c), §\_\_\_.525(d)(1), §\_\_\_.525(d)(2), and §\_\_\_.525(d)(3); the results of audit follow-up; whether any changes in personnel or systems affecting a Type A program have significantly increased risk; and apply professional judgment in determining whether a Type A program is low-risk.

(2) Notwithstanding paragraph (c)(1) of this section, OMB may approve a Federal awarding agency's request that a Type A program at certain recipients may not be considered low-risk. For example, it may be necessary for a large Type A program to be audited as major each year at particular recipients to allow the Federal agency to comply with the Government Management Reform Act of 1994 (31 U.S.C. 3515). The Federal agency shall notify the recipient and, if known, the auditor at least 180 days prior to the end of the fiscal year to be audited of OMB's approval.

(d) **Step 3.** (1) The auditor shall identify Type B programs which are high-risk using professional judgment and the criteria in § \_\_.525. However, should the auditor select Option 2 under Step 4 (paragraph (e)(2)(i)(B) of this section), the auditor is not required to identify more high-risk Type B programs than the number of low-risk Type A programs. Except for known reportable conditions in internal control or compliance problems as discussed in § \_\_.525(b)(1), § \_\_.525(b)(2), and § \_\_.525(c)(1), a single criteria in § \_\_.525 would seldom cause a Type B program to be considered high-risk.

(2) The auditor is not expected to perform risk assessments on relatively small Federal programs. Therefore, the auditor is only required to perform risk assessments on Type B programs that exceed the larger of:

(i) \$100,000 or three-tenths of one percent (.003) of total Federal awards expended when the auditee has less than or equal to \$100 million in total Federal awards expended.

(ii) \$300,000 or three-hundredths of one percent (.0003) of total Federal awards expended when the auditee has more than \$100 million in total Federal awards expended.

(e) **Step 4.** At a minimum, the auditor shall audit all of the following as major programs:

(1) All Type A programs, except the auditor may exclude any Type A programs identified as low-risk under Step 2 (paragraph (c)(1) of this section).

(2) (i) High-risk Type B programs as identified under either of the following two options:

(A) **Option 1.** At least one half of the Type B programs identified as high-risk under Step 3 (paragraph (d) of this section), except this paragraph (e)(2)(i)(A) does not require the auditor to audit more high-risk Type B programs than the number of low-risk Type A programs identified as low-risk under Step 2.

(B) **Option 2.** One high-risk Type B program for each Type A program identified as low-risk under Step 2.

(ii) When identifying which high-risk Type B programs to audit as major under either Option 1 or 2 in paragraph (e)(2)(i)(A) or (B), the auditor is encouraged to use an approach which provides an opportunity for different high-risk Type B programs to be audited as major over a period of time.

(3) Such additional programs as may be necessary to comply with the percentage of coverage rule discussed in paragraph (f) of this section. This paragraph (e)(3) may require the auditor to audit more programs as major than the number of Type A programs.

(f) **Percentage of coverage rule.** The auditor shall audit as major programs Federal programs with Federal awards expended that, in the aggregate, encompass at least 50 percent of total Federal awards expended. If the auditee meets the criteria in § \_\_.530 for a low-risk auditee, the auditor need only audit as major programs Federal programs with Federal awards expended that, in the aggregate, encompass at least 25 percent of total Federal awards expended.

(g) **Documentation of risk.** The auditor shall document in the working papers the risk analysis process used in determining major programs.

(h) **Auditor's judgment.** When the major program determination was performed and documented in accordance with this part, the auditor's judgment in applying the risk-based approach to determine major programs shall be presumed correct. Challenges by Federal agencies and pass-through entities shall only be for clearly improper use of the guidance in this part. However, Federal agencies and pass-through entities may provide auditors guidance about the risk of a particular Federal program and the auditor shall consider this guidance in determining major programs in audits not yet completed.

(i) **Deviation from use of risk criteria.** For first-year audits, the auditor may elect to determine major programs as all Type A programs plus any Type B programs as necessary to meet the percentage of coverage rule discussed in paragraph (f) of this section. Under this option, the auditor would not be required to perform the procedures discussed in paragraphs (c), (d), and (e) of this section.

(1) A first-year audit is the first year the entity is audited under this part or the first year of a change of auditors.

(2) To ensure that a frequent change of auditors would not preclude audit of high-risk Type B programs, this election for first-year audits may not be used by an auditee more than once in every three years.

#### § \_\_.525 Criteria for Federal program risk.

(a) **General.** The auditor's determination should be based on an overall evaluation of the risk of noncompliance occurring which could be material to the Federal program. The auditor shall use auditor judgment and consider criteria, such as described in paragraphs (b), (c), and (d) of this section, to identify risk in Federal programs. Also, as part of the risk analysis, the auditor may wish to discuss a particular Federal program with auditee management and the Federal agency or pass-through entity.

(b) **Current and prior audit experience.** (1) Weaknesses in internal control over Federal programs would indicate higher risk. Consideration should be given to the control environment over Federal programs and such factors as the expectation of management's adherence to applicable laws and regulations and the provisions of contracts and grant agreements and the competence and experience of personnel who administer the Federal programs.

(i) A Federal program administered under multiple internal control structures may have higher risk. When assessing risk in a large single audit, the auditor shall consider whether weaknesses are isolated in a single operating unit (e.g., one college campus) or pervasive throughout the entity.

(ii) When significant parts of a Federal program are passed through to subrecipients, a weak system for monitoring subrecipients would indicate higher risk.

(iii) The extent to which computer processing is used to administer Federal programs, as well as the complexity of that processing, should be considered by the auditor in assessing risk. New and recently modified computer systems may also indicate risk.

(2) Prior audit findings would indicate higher risk, particularly when the situations identified in the audit findings could have a significant impact on a Federal program or have not been corrected.

(3) Federal programs not recently audited as major programs may be of higher risk than Federal programs recently audited as major programs without audit findings.

**(c) Oversight exercised by Federal agencies and pass-through entities.** (1) Oversight exercised by Federal agencies or pass-through entities could indicate risk. For example, recent monitoring or other reviews performed by an oversight entity which disclosed no significant problems would indicate lower risk. However, monitoring which disclosed significant problems would indicate higher risk.

(2) Federal agencies, with the concurrence of OMB, may identify Federal programs which are higher risk. OMB plans to provide this identification in the compliance supplement.

**(d) Inherent risk of the Federal program.** (1) The nature of a Federal program may indicate risk. Consideration should be given to the complexity of the program and the extent to which the Federal program contracts for goods and services. For example, Federal programs that disburse funds through third party contracts or have eligibility criteria may be of higher risk. Federal programs primarily involving staff payroll costs may have a high-risk for time and effort reporting, but otherwise be at low-risk.

(2) The phase of a Federal program in its life cycle at the Federal agency may indicate risk. For example, a new Federal program with new or interim regulations may have higher risk than an established program with time-tested regulations. Also, significant changes in Federal programs, laws, regulations, or the provisions of contracts or grant agreements may increase risk.

(3) The phase of a Federal program in its life cycle at the auditee may indicate risk. For example, during the first and last years that an auditee participates in a Federal program, the risk may be higher due to start-up or closeout of program activities and staff.

(4) Type B programs with larger Federal awards expended would be of higher risk than programs with substantially smaller Federal awards expended.

**§ \_\_.530 Criteria for a low-risk auditee.**

An auditee which meets all of the following conditions for each of the preceding two years (or, in the case of biennial audits, preceding two audit periods) shall qualify as a low-risk auditee and be eligible for reduced audit coverage in accordance with § \_\_.520:

(a) Single audits were performed on an annual basis in accordance with the provisions of this part. A non-Federal entity that has biennial audits does not qualify as a low-risk auditee, unless agreed to in advance by the cognizant or oversight agency for audit.

(b) The auditor's opinions on the financial statements and the schedule of expenditures of Federal awards were unqualified. However, the cognizant or oversight agency for audit may judge that an opinion qualification does not affect the management of Federal awards and provide a waiver.

(c) There were no deficiencies in internal control which were identified as material weaknesses under the requirements of GAGAS. However, the cognizant or oversight agency for audit may judge that any identified material weaknesses do not affect the management of Federal awards and provide a waiver.

(d) None of the Federal programs had audit findings from any of the following in either of the preceding two years (or, in the case of biennial audits, preceding two audit periods) in which they were classified as Type A programs:

(1) Internal control deficiencies which were identified as material weaknesses;

(2) Noncompliance with the provisions of laws, regulations, contracts, or grant agreements which have a material effect on the Type A program; or (3) Known or likely questioned costs that exceed five percent of the total Federal awards expended for a Type A program during the year.

Appendix A to Part \_\_ - [Data Collection Form \(Form SF-SAC\)](#)

Appendix B to Part \_\_ - [Circular A-133 Compliance Supplement](#)

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[Help](#)

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**OMB Circular A-110 (Text Only)**  
**OMB Home**  
**CIRCULAR A-110**  
**(REVISED 11/19/93, As Further Amended 9/30/99)**

**TO THE HEADS OF EXECUTIVE DEPARTMENTS AND ESTABLISHMENTS**

**SUBJECT: Uniform Administrative Requirements for Grants and Agreements  
With Institutions of Higher Education, Hospitals, and Other Non-  
Profit Organizations**

1. Purpose. This Circular sets forth standards for obtaining consistency and uniformity among Federal agencies in the administration of grants to and agreements with institutions of higher education, hospitals, and other non-profit organizations.

2. Authority. Circular A-110 is issued under the authority of 31 U.S.C. 503 (the Chief Financial Officers Act), 31 U.S.C. 1111, 41 U.S.C. 405 (the Office of Federal Procurement Policy Act), Reorganization Plan No. 2 of 1970, and E.O. 11541 ("Prescribing the Duties of the Office of Management and Budget and the Domestic Policy Council in the Executive Office of the President").

3. Policy. Except as provided herein, the standards set forth in this Circular are applicable to all Federal agencies. If any statute specifically prescribes policies or specific requirements that differ from the standards provided herein, the provisions of the statute shall govern.

The provisions of the sections of this Circular shall be applied by Federal agencies to recipients. Recipients shall apply the provisions of this Circular to subrecipients performing substantive work under grants and agreements that are passed through or awarded by the primary recipient, if such subrecipients are organizations described in paragraph 1.

This Circular does not apply to grants, contracts, or other agreements between the Federal Government and units of State or local governments covered by OMB Circular A-102, "Grants and Cooperative Agreements with State and Local Governments," and the Federal agencies' grants management common rule which standardized and codified the administrative requirements Federal agencies impose on State and local grantees. In addition, subawards and contracts to State or local governments are not covered by this Circular. However, this Circular applies to subawards made by State and local governments to organizations covered by this Circular. Federal agencies may apply the provisions of this Circular to commercial organizations, foreign governments, organizations under the jurisdiction of foreign governments, and international organizations.

4. Definitions. Definitions of key terms used in this Circular are contained in Section \_\_\_\_\_.2 in the Attachment.

5. Required Action. The specific requirements and responsibilities of Federal

agencies and institutions of higher education, hospitals, and other non-profit organizations are set forth in this Circular. Federal agencies responsible for awarding and administering grants to and other agreements with organizations described in paragraph 1 shall adopt the language in the Circular unless different provisions are required by Federal statute or are approved by OMB.

6. OMB Responsibilities. OMB will review agency regulations and implementation of this Circular, and will provide interpretations of policy requirements and assistance to insure effective and efficient implementation. Any exceptions will be subject to approval by OMB, as indicated in Section \_\_\_\_4 in the Attachment. Exceptions will only be made in particular cases where adequate justification is presented.

7. Information Contact. Further information concerning this Circular may be obtained by contacting the Office of Federal Financial Management, Office of Management and Budget, Washington, DC 20503, telephone (202) 395-3993.

8. Termination Review Date. This Circular will have a policy review three years from date of issuance.

9. Effective Date. The standards set forth in this Circular which affect Federal agencies will be effective 30 days after publication of the final revision in the Federal Register. Those standards which Federal agencies impose on grantees will be adopted by agencies in codified regulations within six months after publication in the Federal Register. Earlier implementation is encouraged.

## Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations

### SUBPART A - GENERAL

#### Sec.

\_\_\_\_.1 Purpose.

\_\_\_\_.2 Definitions.

\_\_\_\_.3 Effect on other issuances.

\_\_\_\_.4 Deviations.

\_\_\_\_.5 Subawards.

### SUBPART B - PRE-AWARD REQUIREMENTS

\_\_\_\_.10 Purpose.

\_\_\_\_.11 Pre-award policies.

\_\_\_\_.12 Forms for applying for Federal assistance.

\_\_\_\_.13 Debarment and suspension.

\_\_\_\_.14 Special award conditions.

\_\_\_\_.15 Metric system of measurement.

\_\_\_\_.16 Resource Conservation and Recovery Act.

\_\_\_\_.17 Certifications and representations.

### SUBPART C - POST-AWARD REQUIREMENTS

#### Financial and Program Management

\_\_\_\_.20 Purpose of financial and program management.

\_\_\_\_.21 Standards for financial management systems.



- \_\_\_\_.22 Payment.
- \_\_\_\_.23 Cost sharing or matching.
- \_\_\_\_.24 Program income.
- \_\_\_\_.25 Revision of budget and program plans.
- \_\_\_\_.26 Non-Federal audits.
- \_\_\_\_.27 Allowable costs.
- \_\_\_\_.28 Period of availability of funds.
- \_\_\_\_.29 Conditional exemptions.

#### Property Standards

- \_\_\_\_.30 Purpose of property standards.
- \_\_\_\_.31 Insurance coverage.
- \_\_\_\_.32 Real property.
- \_\_\_\_.33 Federally-owned and exempt property.
- \_\_\_\_.34 Equipment.
- \_\_\_\_.35 Supplies and other expendable property.
- \_\_\_\_.36 Intangible property.
- \_\_\_\_.37 Property trust relationship.

#### Procurement Standards

- \_\_\_\_.40 Purpose of procurement standards.
- \_\_\_\_.41 Recipient responsibilities.
- \_\_\_\_.42 Codes of conduct.
- \_\_\_\_.43 Competition.
- \_\_\_\_.44 Procurement procedures.
- \_\_\_\_.45 Cost and price analysis.
- \_\_\_\_.46 Procurement records.
- \_\_\_\_.47 Contract administration.
- \_\_\_\_.48 Contract provisions.

#### Reports and Records

- \_\_\_\_.50 Purpose of reports and records.
- \_\_\_\_.51 Monitoring and reporting program performance.
- \_\_\_\_.52 Financial reporting.
- \_\_\_\_.53 Retention and access requirements for records.

#### Termination and Enforcement

- \_\_\_\_.60 Purpose of termination and enforcement.
- \_\_\_\_.61 Termination.
- \_\_\_\_.62 Enforcement.

#### SUBPART D - AFTER-THE-AWARD REQUIREMENTS

- \_\_\_\_.70 Purpose.
- \_\_\_\_.71 Closeout procedures.
- \_\_\_\_.72 Subsequent adjustments and continuing responsibilities.
- \_\_\_\_.73 Collection of amounts due.

#### APPENDIX A - CONTRACT PROVISIONS

## SUBPART A - General

\_\_\_\_.1 Purpose. This Circular establishes uniform administrative requirements for Federal grants and agreements awarded to institutions of higher education, hospitals, and other non-profit organizations. Federal awarding agencies shall not impose additional or inconsistent requirements, except as provided in Sections \_\_\_\_\_.4, and \_\_\_\_\_.14 or unless specifically required by Federal statute or executive order. Non-profit organizations that implement Federal programs for the States are also subject to State requirements.

### \_\_\_\_.2 Definitions.

(a) Accrued expenditures means the charges incurred by the recipient during a given period requiring the provision of funds for: (1) goods and other tangible property received; (2) services performed by employees, contractors, subrecipients, and other payees; and, (3) other amounts becoming owed under programs for which no current services or performance is required.

(b) Accrued income means the sum of: (1) earnings during a given period from (i) services performed by the recipient, and (ii) goods and other tangible property delivered to purchasers, and (2) amounts becoming owed to the recipient for which no current services or performance is required by the recipient.

(c) Acquisition cost of equipment means the net invoice price of the equipment, including the cost of modifications, attachments, accessories, or auxiliary apparatus necessary to make the property usable for the purpose for which it was acquired. Other charges, such as the cost of installation, transportation, taxes, duty or protective in-transit insurance, shall be included or excluded from the unit acquisition cost in accordance with the recipient's regular accounting practices.

(d) Advance means a payment made by Treasury check or other appropriate payment mechanism to a recipient upon its request either before outlays are made by the recipient or through the use of predetermined payment schedules.

(e) Award means financial assistance that provides support or stimulation to accomplish a public purpose. Awards include grants and other agreements in the form of money or property in lieu of money, by the Federal Government to an eligible recipient. The term does not include: technical assistance, which provides services instead of money; other assistance in the form of loans, loan guarantees, interest subsidies, or insurance; direct payments of any kind to individuals; and, contracts which are required to be entered into and administered under procurement laws and regulations.

(f) Cash contributions means the recipient's cash outlay, including the outlay of money contributed to the recipient by third parties.

(g) Closeout means the process by which a Federal awarding agency determines that all applicable administrative actions and all required work of the award have been completed by the recipient and Federal awarding agency.

(h) Contract means a procurement contract under an award or subaward, and a procurement subcontract under a recipient's or subrecipient's contract.

(i) Cost sharing or matching means that portion of project or program costs not

borne by the Federal Government.

(j) Date of completion means the date on which all work under an award is completed or the date on the award document, or any supplement or amendment thereto, on which Federal sponsorship ends.

(k) Disallowed costs means those charges to an award that the Federal awarding agency determines to be unallowable, in accordance with the applicable Federal cost principles or other terms and conditions contained in the award.

(l) Equipment means tangible nonexpendable personal property including exempt property charged directly to the award having a useful life of more than one year and an acquisition cost of \$5000 or more per unit. However, consistent with recipient policy, lower limits may be established.

(m) Excess property means property under the control of any Federal awarding agency that, as determined by the head thereof, is no longer required for its needs or the discharge of its responsibilities.

(n) Exempt property means tangible personal property acquired in whole or in part with Federal funds, where the Federal awarding agency has statutory authority to vest title in the recipient without further obligation to the Federal Government. An example of exempt property authority is contained in the Federal Grant and Cooperative Agreement Act (31 U.S.C. 6306), for property acquired under an award to conduct basic or applied research by a non-profit institution of higher education or non-profit organization whose principal purpose is conducting scientific research.

(o) Federal awarding agency means the Federal agency that provides an award to the recipient.

(p) Federal funds authorized means the total amount of Federal funds obligated by the Federal Government for use by the recipient. This amount may include any authorized carryover of unobligated funds from prior funding periods when permitted by agency regulations or agency implementing instructions.

(q) Federal share of real property, equipment, or supplies means that percentage of the property's acquisition costs and any improvement expenditures paid with Federal funds.

(r) Funding period means the period of time when Federal funding is available for obligation by the recipient.

(s) Intangible property and debt instruments means, but is not limited to, trademarks, copyrights, patents and patent applications and such property as loans, notes and other debt instruments, lease agreements, stock and other instruments of property ownership, whether considered tangible or intangible.

(t) Obligations means the amounts of orders placed, contracts and grants awarded, services received and similar transactions during a given period that require payment by the recipient during the same or a future period.

(u) Outlays or expenditures means charges made to the project or program. They may be reported on a cash or accrual basis. For reports prepared on a cash basis, outlays are the sum of cash disbursements for direct charges for goods and services, the amount of indirect expense charged, the value of third party

in-kind contributions applied and the amount of cash advances and payments made to subrecipients. For reports prepared on an accrual basis, outlays are the sum of cash disbursements for direct charges for goods and services, the amount of indirect expense incurred, the value of in-kind contributions applied, and the net increase (or decrease) in the amounts owed by the recipient for goods and other property received, for services performed by employees, contractors, subrecipients and other payees and other amounts becoming owed under programs for which no current services or performance are required.

(v) Personal property means property of any kind except real property. It may be tangible, having physical existence, or intangible, having no physical existence, such as copyrights, patents, or securities.

(w) Prior approval means written approval by an authorized official evidencing prior consent.

(x) Program income means gross income earned by the recipient that is directly generated by a supported activity or earned as a result of the award (see exclusions in paragraphs \_\_\_\_\_.24 (e) and (h)). Program income includes, but is not limited to, income from fees for services performed, the use or rental of real or personal property acquired under federally-funded projects, the sale of commodities or items fabricated under an award, license fees and royalties on patents and copyrights, and interest on loans made with award funds. Interest earned on advances of Federal funds is not program income. Except as otherwise provided in Federal awarding agency regulations or the terms and conditions of the award, program income does not include the receipt of principal on loans, rebates, credits, discounts, etc., or interest earned on any of them.

(y) Project costs means all allowable costs, as set forth in the applicable Federal cost principles, incurred by a recipient and the value of the contributions made by third parties in accomplishing the objectives of the award during the project period.

(z) Project period means the period established in the award document during which Federal sponsorship begins and ends.

(aa) Property means, unless otherwise stated, real property, equipment, intangible property and debt instruments.

(bb) Real property means land, including land improvements, structures and appurtenances thereto, but excludes movable machinery and equipment.

(cc) Recipient means an organization receiving financial assistance directly from Federal awarding agencies to carry out a project or program. The term includes public and private institutions of higher education, public and private hospitals, and other quasi-public and private non-profit organizations such as, but not limited to, community action agencies, research institutes, educational associations, and health centers. The term may include commercial organizations, foreign or international organizations (such as agencies of the United Nations) which are recipients, subrecipients, or contractors or subcontractors of recipients or subrecipients at the discretion of the Federal awarding agency. The term does not include government-owned contractor-operated facilities or

research centers providing continued support for mission-oriented, large-scale programs that are government-owned or controlled, or are designated as federally-funded research and development centers.

(dd) Research and development means all research activities, both basic and , and all development activities that are supported at universities, colleges, and other non-profit institutions. "Research" is defined as a systematic study directed toward fuller scientific knowledge or understanding of the subject studied. "Development" is the systematic use of knowledge and understanding gained from research directed toward the production of useful materials, devices, systems, or methods, including design and development of prototypes and processes. The term research also includes activities involving the training of individuals in research techniques where such activities utilize the same facilities as other research and development activities and where such activities are not included in the instruction function.

(ee) Small awards means a grant or cooperative agreement not exceeding the small purchase threshold fixed at 41 U.S.C. 403(11) (currently \$25,000).

(ff) Subaward means an award of financial assistance in the form of money, or property in lieu of money, made under an award by a recipient to an eligible subrecipient or by a subrecipient to a lower tier subrecipient. The term includes financial assistance when provided by any legal agreement, even if the agreement is called a contract, but does not include procurement of goods and services nor does it include any form of assistance which is excluded from the definition of "award" in paragraph (e).

(gg) Subrecipient means the legal entity to which a subaward is made and which is accountable to the recipient for the use of the funds provided. The term may include foreign or international organizations (such as agencies of the United Nations) at the discretion of the Federal awarding agency.

(hh) Supplies means all personal property excluding equipment, intangible property, and debt instruments as defined in this section, and inventions of a contractor conceived or first actually reduced to practice in the performance of work under a funding agreement ("subject inventions"), as defined in 37 CFR part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts, and Cooperative Agreements."

(ii) Suspension means an action by a Federal awarding agency that temporarily withdraws Federal sponsorship under an award, pending corrective action by the recipient or pending a decision to terminate the award by the Federal awarding agency. Suspension of an award is a separate action from suspension under Federal agency regulations implementing E.O.s 12549 and 12689, "Debarment and Suspension."

(jj) Termination means the cancellation of Federal sponsorship, in whole or in part, under an agreement at any time prior to the date of completion.

(kk) Third party in-kind contributions means the value of non-cash contributions provided by non-Federal third parties. Third party in-kind contributions may be in the form of real property, equipment, supplies and other expendable property,

and the value of goods and services directly benefiting and specifically identifiable to the project or program.

(ll) Unliquidated obligations, for financial reports prepared on a cash basis, means the amount of obligations incurred by the recipient that have not been paid. For reports prepared on an accrued expenditure basis, they represent the amount of obligations incurred by the recipient for which an outlay has not been recorded.

(mm) Unobligated balance means the portion of the funds authorized by the Federal awarding agency that has not been obligated by the recipient and is determined by deducting the cumulative obligations from the cumulative funds authorized.

(nn) Unrecovered indirect cost means the difference between the amount awarded and the amount which could have been awarded under the recipient's approved negotiated indirect cost rate.

(oo) Working capital advance means a procedure where by funds are advanced to the recipient to cover its estimated disbursement needs for a given initial period.

\_\_\_\_.3 Effect on other issuances. For awards subject to this Circular, all administrative requirements of codified program regulations, program manuals, handbooks and other nonregulatory materials which are inconsistent with the requirements of this Circular shall be superseded, except to the extent they are required by statute, or authorized in accordance with the deviations provision in Section \_\_\_\_.

\_\_\_\_.4 Deviations. The Office of Management and Budget (OMB) may grant exceptions for classes of grants or recipients subject to the requirements of this Circular when exceptions are not prohibited by statute. However, in the interest of maximum uniformity, exceptions from the requirements of this Circular shall be permitted only in unusual circumstances. Federal awarding agencies may apply more restrictive requirements to a class of recipients when approved by OMB. Federal awarding agencies may apply less restrictive requirements when awarding small awards, except for those requirements which are statutory. Exceptions on a case-by-case basis may also be made by Federal awarding agencies.

\_\_\_\_.5 Subawards. Unless sections of this Circular specifically exclude subrecipients from coverage, the provisions of this Circular shall be applied to subrecipients performing work under awards if such subrecipients are institutions of higher education, hospitals or other non-profit organizations. State and local government subrecipients are subject to the provisions of regulations implementing the grants management common rule, "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments," published at 53 FR 8034 (3/11/88).

#### SUBPART B - Pre-Award Requirements

\_\_\_\_.10 Purpose. Sections \_\_\_\_ through \_\_\_\_ prescribes forms and instructions and other pre-award matters to be used in applying for Federal awards.

\_\_\_\_.11 Pre-award policies.

(a) Use of Grants and Cooperative Agreements, and Contracts. In each instance, the Federal awarding agency shall decide on the appropriate award instrument (i.e., grant, cooperative agreement, or contract). The Federal Grant and Cooperative Agreement Act (31 U.S.C. 6301-08) governs the use of grants, cooperative agreements and contracts. A grant or cooperative agreement shall be used only when the principal purpose of a transaction is to accomplish a public purpose of support or stimulation authorized by Federal statute. The statutory criterion for choosing between grants and cooperative agreements is that for the latter, "substantial involvement is expected between the executive agency and the State, local government, or other recipient when carrying out the activity contemplated in the agreement." Contracts shall be used when the principal purpose is acquisition of property or services for the direct benefit or use of the Federal Government.

(b) Public Notice and Priority Setting. Federal awarding agencies shall notify the public of its intended funding priorities for discretionary grant programs, unless funding priorities are established by Federal statute.

\_\_\_\_.12 Forms for applying for Federal assistance.

(a) Federal awarding agencies shall comply with the applicable report clearance requirements of 5 CFR part 1320, "Controlling Paperwork Burdens on the Public," with regard to all forms used by the Federal awarding agency in place of or as a supplement to the Standard Form 424 (SF-424) series.

(b) Applicants shall use the SF-424 series or those forms and instructions prescribed by the Federal awarding agency.

(c) For Federal programs covered by E.O. 12372, "Intergovernmental Review of Federal Programs," the applicant shall complete the appropriate sections of the SF-424 (Application for Federal Assistance) indicating whether the application was subject to review by the State Single Point of Contact (SPOC). The name and address of the SPOC for a particular State can be obtained from the Federal awarding agency or the Catalog of Federal Domestic Assistance. The SPOC shall advise the applicant whether the program for which application is made has been selected by that State for review.

(d) Federal awarding agencies that do not use the SF-424 form should indicate whether the application is subject to review by the State under E.O. 12372.

\_\_\_\_.13 Debarment and suspension. Federal awarding agencies and recipients shall comply with the nonprocurement debarment and suspension common rule implementing

E.O.s 12549 and 12689, "Debarment and Suspension." This common rule restricts subawards and contracts with certain parties that are debarred, suspended or otherwise excluded from or ineligible for participation in Federal assistance programs or activities.

\_\_\_\_.14 Special award conditions. If an applicant or recipient: (a) has a history of poor performance, (b) is not financially stable, (c) has a management system that does not meet the standards prescribed in this Circular, (d) has not conformed to the terms and conditions of a previous award, or (e) is not

otherwise responsible, Federal awarding agencies may impose additional requirements as needed, provided that such applicant or recipient is notified in writing as to: the nature of the additional requirements, the reason why the additional requirements are being imposed, the nature of the corrective action needed, the time allowed for completing the corrective actions, and the method for requesting reconsideration of the additional requirements imposed. Any special conditions shall be promptly removed once the conditions that prompted them have been corrected.

\_\_\_\_.15 Metric system of measurement. The Metric Conversion Act, as amended by the Omnibus Trade and Competitiveness Act (15 U.S.C. 205) declares that the metric system is the preferred measurement system for U.S. trade and commerce. The Act requires each Federal agency to establish a date or dates in consultation with the Secretary of Commerce, when the metric system of measurement will be used in the agency's procurements, grants, and other business-related activities. Metric implementation may take longer where the use of the system is initially impractical or likely to cause significant inefficiencies in the accomplishment of federally-funded activities. Federal awarding agencies shall follow the provisions of E.O. 12770, "Metric Usage in Federal Government Programs."

\_\_\_\_.16 Resource Conservation and Recovery Act (RCRA) (Pub. L. 94-580 codified at 42 U.S.C. 6962). Under the Act, any State agency or agency of a political subdivision of a State which is using appropriated Federal funds must comply with Section 6002. Section 6002 requires that preference be given in procurement programs to the purchase of specific products containing recycled materials identified in guidelines developed by the Environmental Protection Agency (EPA) (40 CFR parts 247-254). Accordingly, State and local institutions of higher education, hospitals, and non-profit organizations that receive direct Federal awards or other Federal funds shall give preference in their procurement programs funded with Federal funds to the purchase of recycled products pursuant to the EPA guidelines.

\_\_\_\_.17 Certifications and representations. Unless prohibited by statute or codified regulation, each Federal awarding agency is authorized and encouraged to allow recipients to submit certifications and representations required by statute, executive order, or regulation on an annual basis, if the recipients have ongoing and continuing relationships with the agency. Annual certifications and representations shall be signed by responsible officials with the authority to ensure recipients' compliance with the pertinent requirements.

#### SUBPART C - Post-Award Requirements Financial and Program Management

\_\_\_\_.20 Purpose of financial and program management. Sections \_\_\_\_\_.21 through \_\_\_\_\_.28 prescribe standards for financial management systems, methods for making payments and rules for: satisfying cost sharing and matching requirements, accounting for program income, budget revision approvals, making audits, determining allowability of cost, and establishing fund availability.



\_\_\_\_.21 Standards for financial management systems.

- (a) Federal awarding agencies shall require recipients to relate financial data to performance data and develop unit cost information whenever practical.
- (b) Recipients' financial management systems shall provide for the following.
  - (1) Accurate, current and complete disclosure of the financial results of each federally-sponsored project or program in accordance with the reporting requirements set forth in Section \_\_\_\_\_.52. If a Federal awarding agency requires reporting on an accrual basis from a recipient that maintains its records on other than an accrual basis, the recipient shall not be required to establish an accrual accounting system. These recipients may develop such accrual data for its reports on the basis of an analysis of the documentation on hand.
  - (2) Records that identify adequately the source and application of funds for federally-sponsored activities. These records shall contain information pertaining to Federal awards, authorizations, obligations, unobligated balances, assets, outlays, income and interest.
  - (3) Effective control over and accountability for all funds, property and other assets. Recipients shall adequately safeguard all such assets and assure they are used solely for authorized purposes.
  - (4) Comparison of outlays with budget amounts for each award. Whenever appropriate, financial information should be related to performance and unit cost data.
  - (5) Written procedures to minimize the time elapsing between the transfer of funds to the recipient from the U.S. Treasury and the issuance or redemption of checks, warrants or payments by other means for program purposes by the recipient. To the extent that the provisions of the Cash Management Improvement Act (CMIA) (Pub. L. 101-453) govern, payment methods of State agencies, instrumentalities, and fiscal agents shall be consistent with CMIA Treasury-State Agreements or the CMIA default procedures codified at 31 CFR part 205, "Withdrawal of Cash from the Treasury for Advances under Federal Grant and Other Programs."
  - (6) Written procedures for determining the reasonableness, allocability and allowability of costs in accordance with the provisions of the applicable Federal cost principles and the terms and conditions of the award.
  - (7) Accounting records including cost accounting records that are supported by source documentation.
- (c) Where the Federal Government guarantees or insures the repayment of money borrowed by the recipient, the Federal awarding agency, at its discretion, may require adequate bonding and insurance if the bonding and insurance requirements of the recipient are not deemed adequate to protect the interest of the Federal Government.
- (d) The Federal awarding agency may require adequate fidelity bond coverage where the recipient lacks sufficient coverage to protect the Federal Government's interest.
- (e) Where bonds are required in the situations described above, the bonds shall

be obtained from companies holding certificates of authority as acceptable sureties, as prescribed in 31 CFR part 223, "Surety Companies Doing Business with the United States."

\_\_\_\_.22 Payment.

(a) Payment methods shall minimize the time elapsing between the transfer of funds from the United States Treasury and the issuance or redemption of checks, warrants, or payment by other means by the recipients. Payment methods of State agencies or instrumentalities shall be consistent with Treasury-State CMIA agreements or default procedures codified at 31 CFR part 205.

(b) Recipients are to be paid in advance, provided they maintain or demonstrate the willingness to maintain: (1) written procedures that minimize the time elapsing between the transfer of funds and disbursement by the recipient, and (2) financial management systems that meet the standards for fund control and accountability as established in Section \_\_\_\_\_.21. Cash advances to a recipient organization shall be limited to the minimum amounts needed and be timed to be in accordance with the actual, immediate cash requirements of the recipient organization in carrying out the purpose of the approved program or project. The timing and amount of cash advances shall be as close as is administratively feasible to the actual disbursements by the recipient organization for direct program or project costs and the proportionate share of any allowable indirect costs.

(c) Whenever possible, advances shall be consolidated to cover anticipated cash needs for all awards made by the Federal awarding agency to the recipient.

(1) Advance payment mechanisms include, but are not limited to, Treasury check and electronic funds transfer.

(2) Advance payment mechanisms are subject to 31 CFR part 205.

(3) Recipients shall be authorized to submit requests for advances and reimbursements at least monthly when electronic fund transfers are not used.

(d) Requests for Treasury check advance payment shall be submitted on SF-270, "Request for Advance or Reimbursement," or other forms as may be authorized by OMB. This form is not to be used when Treasury check advance payments are made to the recipient automatically through the use of a predetermined payment schedule or if precluded by special Federal awarding agency instructions for electronic funds transfer.

(e) Reimbursement is the preferred method when the requirements in paragraph (b) cannot be met. Federal awarding agencies may also use this method on any construction agreement, or if the major portion of the construction project is accomplished through private market financing or Federal loans, and the Federal assistance constitutes a minor portion of the project.

(1) When the reimbursement method is used, the Federal awarding agency shall make payment within 30 days after receipt of the billing, unless the billing is improper.

(2) Recipients shall be authorized to submit request for reimbursement at least monthly when electronic funds transfers are not used.

(f) If a recipient cannot meet the criteria for advance payments and the Federal awarding agency has determined that reimbursement is not feasible because the recipient lacks sufficient working capital, the Federal awarding agency may provide cash on a working capital advance basis. Under this procedure, the Federal awarding agency shall advance cash to the recipient to cover its estimated disbursement needs for an initial period generally geared to the awardee's disbursing cycle. Thereafter, the Federal awarding agency shall reimburse the recipient for its actual cash disbursements. The working capital advance method of payment shall not be used for recipients unwilling or unable to provide timely advances to their subrecipient to meet the subrecipient's actual cash disbursements.

(g) To the extent available, recipients shall disburse funds available from repayments to and interest earned on a revolving fund, program income, rebates, refunds, contract settlements, audit recoveries and interest earned on such funds before requesting additional cash payments.

(h) Unless otherwise required by statute, Federal awarding agencies shall not withhold payments for proper charges made by recipients at any time during the project period unless (1) or (2) apply.

(1) A recipient has failed to comply with the project objectives, the terms and conditions of the award, or Federal reporting requirements.

(2) The recipient or subrecipient is delinquent in a debt to the United States as defined in OMB Circular A-129, "Managing Federal Credit Programs." Under such conditions, the Federal awarding agency may, upon reasonable notice, inform the recipient that payments shall not be made for obligations incurred after a specified date until the conditions are corrected or the indebtedness to the Federal Government is liquidated.

(i) Standards governing the use of banks and other institutions as depositories of funds advanced under awards are as follows.

(1) Except for situations described in paragraph (i)(2), Federal awarding agencies shall not require separate depository accounts for funds provided to a recipient or establish any eligibility requirements for depositories for funds provided to a recipient. However, recipients must be able to account for the receipt, obligation and expenditure of funds.

(2) Advances of Federal funds shall be deposited and maintained in insured accounts whenever possible.

(j) Consistent with the national goal of expanding the opportunities for women-owned and minority-owned business enterprises, recipients shall be encouraged to use women- owned and minority-owned banks (a bank which is owned at least 50 percent by women or minority group members).

(k) Recipients shall maintain advances of Federal funds in interest bearing accounts, unless (1), (2) or (3) apply.

(1) The recipient receives less than \$120,000 in Federal awards per year.

(2) The best reasonably available interest bearing account would not be expected to earn interest in excess of \$250 per year on Federal cash balances.

(3) The depository would require an average or minimum balance so high that it would not be feasible within the expected Federal and non-Federal cash resources.

(l) For those entities where CMIA and its implementing regulations do not apply, interest earned on Federal advances deposited in interest bearing accounts shall be remitted annually to Department of Health and Human Services, Payment Management System, Rockville, MD 20852. Interest amounts up to \$250 per year may be retained by the recipient for administrative expense. State universities and hospitals shall comply with CMIA, as it pertains to interest. If an entity subject to CMIA uses its own funds to pay pre-award costs for discretionary awards without prior written approval from the Federal awarding agency, it waives its right to recover the interest under CMIA.

(m) Except as noted elsewhere in this Circular, only the following forms shall be authorized for the recipients in requesting advances and reimbursements. Federal agencies shall not require more than an original and two copies of these forms.

(1) SF-270, Request for Advance or Reimbursement. Each Federal awarding agency shall adopt the SF-270 as a standard form for all nonconstruction programs when electronic funds transfer or predetermined advance methods are not used. Federal awarding agencies, however, have the option of using this form for construction programs in lieu of the SF-271, "Outlay Report and Request for Reimbursement for Construction Programs."

(2) SF-271, Outlay Report and Request for Reimbursement for Construction Programs. Each Federal awarding agency shall adopt the SF-271 as the standard form to be used for requesting reimbursement for construction programs. However, a Federal awarding agency may substitute the SF-270 when the Federal awarding agency determines that it provides adequate information to meet Federal needs.

#### 23 Cost sharing or matching.

(a) All contributions, including cash and third party in-kind, shall be accepted as part of the recipient's cost sharing or matching when such contributions meet all of the following criteria.

(1) Are verifiable from the recipient's records.

(2) Are not included as contributions for any other federally-assisted project or program.

(3) Are necessary and reasonable for proper and efficient accomplishment of project or program objectives.

(4) Are allowable under the applicable cost principles.

(5) Are not paid by the Federal Government under another award, except where authorized by Federal statute to be used for cost sharing or matching.

(6) Are provided for in the approved budget when required by the Federal awarding agency.

(7) Conform to other provisions of this Circular, as applicable.

(b) Unrecovered indirect costs may be included as part of cost sharing or matching only with the prior approval of the Federal awarding agency.

(c) Values for recipient contributions of services and property shall be established in accordance with the applicable cost principles. If a Federal awarding agency authorizes recipients to donate buildings or land for construction/facilities acquisition projects or long-term use, the value of the donated property for cost sharing or matching shall be the lesser of (1) or (2).

(1) The certified value of the remaining life of the property recorded in the recipient's accounting records at the time of donation.

(2) The current fair market value. However, when there is sufficient justification, the Federal awarding agency may approve the use of the current fair market value of the donated property, even if it exceeds the certified value at the time of donation to the project.

(d) Volunteer services furnished by professional and technical personnel, consultants, and other skilled and unskilled labor may be counted as cost sharing or matching if the service is an integral and necessary part of an approved project or program. Rates for volunteer services shall be consistent with those paid for similar work in the recipient's organization. In those instances in which the required skills are not found in the recipient organization, rates shall be consistent with those paid for similar work in the labor market in which the recipient competes for the kind of services involved. In either case, paid fringe benefits that are reasonable, allowable, and allocable may be included in the valuation.

(e) When an employer other than the recipient furnishes the services of an employee, these services shall be valued at the employee's regular rate of pay (plus an amount of fringe benefits that are reasonable, allowable, and allocable, but exclusive of overhead costs), provided these services are in the same skill for which the employee is normally paid.

(f) Donated supplies may include such items as expendable equipment, office supplies, laboratory supplies or workshop and classroom supplies. Value assessed to donated supplies included in the cost sharing or matching share shall be reasonable and shall not exceed the fair market value of the property at the time of the donation.

(g) The method used for determining cost sharing or matching for donated equipment, buildings and land for which title passes to the recipient may differ according to the purpose of the award, if (1) or (2) apply.

(1) If the purpose of the award is to assist the recipient in the acquisition of equipment, buildings or land, the total value of the donated property may be claimed as cost sharing or matching.

(2) If the purpose of the award is to support activities that require the use of equipment, buildings or land, normally only depreciation or use charges for equipment and buildings may be made. However, the full value of equipment or other capital assets and fair rental charges for land may be allowed, provided that the Federal awarding agency has approved the charges.

(h) The value of donated property shall be determined in accordance with the usual accounting policies of the recipient, with the following qualifications.

- (1) The value of donated land and buildings shall not exceed its fair market value at the time of donation to the recipient as established by an independent appraiser (e.g., certified real property appraiser or General Services Administration representative) and certified by a responsible official of the recipient.
- (2) The value of donated equipment shall not exceed the fair market value of equipment of the same age and condition at the time of donation.
- (3) The value of donated space shall not exceed the fair rental value of comparable space as established by an independent appraisal of comparable space and facilities in a privately-owned building in the same locality.
- (4) The value of loaned equipment shall not exceed its fair rental value.
- (5) The following requirements pertain to the recipient's supporting records for in-kind contributions from third parties.
  - (i) Volunteer services shall be documented and, to the extent feasible, supported by the same methods used by the recipient for its own employees.
  - (ii) The basis for determining the valuation for personal service, material, equipment, buildings and land shall be documented.

\_\_\_\_.24 Program income.

- (a) Federal awarding agencies shall apply the standards set forth in this section in requiring recipient organizations to account for program income related to projects financed in whole or in part with Federal funds.
- (b) Except as provided in paragraph (h) below, program income earned during the project period shall be retained by the recipient and, in accordance with Federal awarding agency regulations or the terms and conditions of the award, shall be used in one or more of the ways listed in the following.
  - (1) Added to funds committed to the project by the Federal awarding agency and recipient and used to further eligible project or program objectives.
  - (2) Used to finance the non-Federal share of the project or program.
  - (3) Deducted from the total project or program allowable cost in determining the net allowable costs on which the Federal share of costs is based.
- (c) When an agency authorizes the disposition of program income as described in paragraphs (b)(1) or (b)(2), program income in excess of any limits stipulated shall be used in accordance with paragraph (b)(3).
- (d) In the event that the Federal awarding agency does not specify in its regulations or the terms and conditions of the award how program income is to be used, paragraph (b)(3) shall apply automatically to all projects or programs except research. For awards that support research, paragraph (b)(1) shall apply automatically unless the awarding agency indicates in the terms and conditions another alternative on the award or the recipient is subject to special award conditions, as indicated in Section \_\_\_\_\_.14.
- (e) Unless Federal awarding agency regulations or the terms and conditions of the award provide otherwise, recipients shall have no obligation to the Federal Government regarding program income earned after the end of the project period.
- (f) If authorized by Federal awarding agency regulations or the terms and

conditions of the award, costs incident to the generation of program income may be deducted from gross income to determine program income, provided these costs have not been charged to the award.

(g) Proceeds from the sale of property shall be handled in accordance with the requirements of the Property Standards (See Sections \_\_.30 through \_\_.37).

(h) Unless Federal awarding agency regulations or the terms and condition of the award provide otherwise, recipients shall have no obligation to the Federal Government with respect to program income earned from license fees and royalties for copyrighted material, patents, patent applications, trademarks, and inventions produced under an award. However, Patent and Trademark Amendments (35

U.S.C. 18) apply to inventions made under an experimental, developmental, or research award.

\_\_.25 Revision of budget and program plans.

(a) The budget plan is the financial expression of the project or program as approved during the award process. It may include either the Federal and non-Federal share, or only the Federal share, depending upon Federal awarding agency requirements. It shall be related to performance for program evaluation purposes whenever appropriate.

(b) Recipients are required to report deviations from budget and program plans, and request prior approvals for budget and program plan revisions, in accordance with this section.

(c) For nonconstruction awards, recipients shall request prior approvals from Federal awarding agencies for one or more of the following program or budget related reasons.

(1) Change in the scope or the objective of the project or program (even if there is no associated budget revision requiring prior written approval).

(2) Change in a key person specified in the application or award document.

(3) The absence for more than three months, or a 25 percent reduction in time devoted to the project, by the approved project director or principal investigator.

(4) The need for additional Federal funding.

(5) The transfer of amounts budgeted for indirect costs to absorb increases in direct costs, or vice versa, if approval is required by the Federal awarding agency.

(6) The inclusion, unless waived by the Federal awarding agency, of costs that require prior approval in accordance with OMB Circular A-21, "Cost Principles for Educational Institutions," OMB Circular A-122, "Cost Principles for Non-Profit Organizations," or 45 CFR part 74 Appendix E, "Principles for Determining Costs Applicable to Research and Development under Grants and Contracts with Hospitals," or 48 CFR part 31, "Contract Cost Principles and Procedures," as applicable.

(7) The transfer of funds allotted for training allowances (direct payment to trainees) to other categories of expense.

(8) Unless described in the application and funded in the approved awards, the subaward, transfer or contracting out of any work under an award. This provision does not apply to the purchase of supplies, material, equipment or general support services.

(d) No other prior approval requirements for specific items may be imposed unless a deviation has been approved by OMB.

(e) Except for requirements listed in paragraphs (c)(1) and (c)(4) of this section, Federal awarding agencies are authorized, at their option, to waive cost-related and administrative prior written approvals required by this Circular and OMB Circulars A-21 and A-122. Such waivers may include authorizing recipients to do any one or more of the following.

(1) Incur pre-award costs 90 calendar days prior to award or more than 90 calendar days with the prior approval of the Federal awarding agency. All pre-award costs are incurred at the recipient's risk (i.e., the Federal awarding agency is under no obligation to reimburse such costs if for any reason the recipient does not receive an award or if the award is less than anticipated and inadequate to cover such costs).

(2) Initiate a one-time extension of the expiration date of the award of up to 12 months unless one or more of the following conditions apply. For one-time extensions, the recipient must notify the Federal awarding agency in writing with the supporting reasons and revised expiration date at least 10 days before the expiration date specified in the award. This one-time extension may not be exercised merely for the purpose of using unobligated balances.

(i) The terms and conditions of award prohibit the extension.

(ii) The extension requires additional Federal funds.

(iii) The extension involves any change in the approved objectives or scope of the project.

(3) Carry forward unobligated balances to subsequent funding periods.

(4) For awards that support research, unless the Federal awarding agency provides otherwise in the award or in the agency's regulations, the prior approval requirements described in paragraph (e) are automatically waived (i.e., recipients need not obtain such prior approvals) unless one of the conditions included in paragraph (e)(2) applies.

(f) The Federal awarding agency may, at its option, restrict the transfer of funds among direct cost categories or programs, functions and activities for awards in which the Federal share of the project exceeds \$100,000 and the cumulative amount of such transfers exceeds or is expected to exceed 10 percent of the total budget as last approved by the Federal awarding agency. No Federal awarding agency shall permit a transfer that would cause any Federal appropriation or part thereof to be used for purposes other than those consistent with the original intent of the appropriation.

(g) All other changes to nonconstruction budgets, except for the changes described in paragraph (j), do not require prior approval.

(h) For construction awards, recipients shall request prior written approval



promptly from Federal awarding agencies for budget revisions whenever (1), (2) or (3) apply.

(1) The revision results from changes in the scope or the objective of the project or program.

(2) The need arises for additional Federal funds to complete the project.

(3) A revision is desired which involves specific costs for which prior written approval requirements may be imposed consistent with applicable OMB cost principles listed in Section \_\_\_\_\_.27.

(i) No other prior approval requirements for specific items may be imposed unless a deviation has been approved by OMB.

(j) When a Federal awarding agency makes an award that provides support for both construction and nonconstruction work, the Federal awarding agency may require the recipient to request prior approval from the Federal awarding agency before making any fund or budget transfers between the two types of work supported.

(k) For both construction and nonconstruction awards, Federal awarding agencies shall require recipients to notify the Federal awarding agency in writing promptly whenever the amount of Federal authorized funds is expected to exceed the needs of the recipient for the project period by more than \$5000 or five percent of the Federal award, whichever is greater. This notification shall not be required if an application for additional funding is submitted for a continuation award.

(l) When requesting approval for budget revisions, recipients shall use the budget forms that were used in the application unless the Federal awarding agency indicates a letter of request suffices.

(m) Within 30 calendar days from the date of receipt of the request for budget revisions, Federal awarding agencies shall review the request and notify the recipient whether the budget revisions have been approved. If the revision is still under consideration at the end of 30 calendar days, the Federal awarding agency shall inform the recipient in writing of the date when the recipient may expect the decision.

#### \_\_\_\_\_.26 Non-Federal audits.

(a) Recipients and subrecipients that are institutions of higher education or other non-profit organizations (including hospitals) shall be subject to the audit requirements contained in the Single Audit Act Amendments of 1996 (31 USC 7501-7507) and revised OMB Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations."

(b) State and local governments shall be subject to the audit requirements contained in the Single Audit Act Amendments of 1996 (31 USC 7501-7507) and revised OMB Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations."

(c) For-profit hospitals not covered by the audit provisions of revised OMB Circular A-133 shall be subject to the audit requirements of the Federal awarding agencies.

(d) Commercial organizations shall be subject to the audit requirements of the

Federal awarding agency or the prime recipient as incorporated into the award document.

\_\_\_\_.27 Allowable costs. For each kind of recipient, there is a set of Federal principles for determining allowable costs. Allowability of costs shall be determined in accordance with the cost principles applicable to the entity incurring the costs. Thus, allowability of costs incurred by State, local or federally-recognized Indian tribal governments is determined in accordance with the provisions of OMB Circular A-87, "Cost Principles for State, Local, and Indian Tribal Governments." The allowability of costs incurred by non-profit organizations is determined in accordance with the provisions of OMB Circular A-122, "Cost Principles for Non-Profit Organizations." The allowability of costs incurred by institutions of higher education is determined in accordance with the provisions of OMB Circular A-21, "Cost Principles for Educational Institutions." The allowability of costs incurred by hospitals is determined in accordance with the provisions of Appendix E of 45 CFR part 74, "Principles for Determining Costs Applicable to Research and Development Under Grants and Contracts with Hospitals." The allowability of costs incurred by commercial organizations and those non-profit organizations listed in Attachment C to Circular A-122 is determined in accordance with the provisions of the Federal Acquisition Regulation (FAR) at 48 CFR part 31.

\_\_\_\_.28 Period of availability of funds. Where a funding period is specified, a recipient may charge to the grant only allowable costs resulting from obligations incurred during the funding period and any pre-award costs authorized by the Federal awarding agency.

\_\_\_\_.29 Conditional exemptions.

(a) OMB authorizes conditional exemption from OMB administrative requirements and cost principles circulars for certain Federal programs with statutorily-authorized consolidated planning and consolidated administrative funding, that are identified by a Federal agency and approved by the head of the Executive department or establishment. A Federal agency shall consult with OMB during its consideration of whether to grant such an exemption.

(b) To promote efficiency in State and local program administration, when Federal non-entitlement programs with common purposes have specific statutorily-authorized consolidated planning and consolidated administrative funding and where most of the State agency's resources come from non-Federal sources, Federal agencies may exempt these covered State-administered, non-entitlement grant programs from certain OMB grants management requirements. The exemptions would be from all but the allocability of costs provisions of OMB Circulars A-87 (Attachment A, subsection C.3), "Cost Principles for State, Local, and Indian Tribal Governments," A-21 (Section C, subpart 4), "Cost Principles for Educational Institutions," and A-122 (Attachment A, subsection A.4), "Cost Principles for Non-Profit Organizations," and from all of the administrative requirements provisions of OMB Circular A-110, "Uniform Administrative Requirements for Grants and Agreements with Institutions of

Higher Education, Hospitals, and Other Non-Profit Organizations," and the agencies' grants management common rule.

(c) When a Federal agency provides this flexibility, as a prerequisite to a State's exercising this option, a State must adopt its own written fiscal and administrative requirements for expending and accounting for all funds, which are consistent with the provisions of OMB Circular A-87, and extend such policies to all subrecipients. These fiscal and administrative requirements must be sufficiently specific to ensure that: funds are used in compliance with all applicable Federal statutory and regulatory provisions, costs are reasonable and necessary for operating these programs, and funds are not be used for general expenses required to carry out other responsibilities of a State or its subrecipients.

#### Property Standards

\_\_\_\_.30 Purpose of property standards. Sections \_\_\_\_\_.31 through \_\_\_\_\_.37 set forth uniform standards governing management and disposition of property furnished by the Federal Government whose cost was charged to a project supported by a Federal award. Federal awarding agencies shall require recipients to observe these standards under awards and shall not impose additional requirements, unless specifically required by Federal statute. The recipient may use its own property management standards and procedures provided it observes the provisions of Sections \_\_\_\_\_.31 through \_\_\_\_\_.37.

\_\_\_\_.31 Insurance coverage. Recipients shall, at a minimum, provide the equivalent insurance coverage for real property and equipment acquired with Federal funds as provided to property owned by the recipient. Federally-owned property need not be insured unless required by the terms and conditions of the award.

\_\_\_\_.32 Real property. Each Federal awarding agency shall prescribe requirements for recipients concerning the use and disposition of real property acquired in whole or in part under awards. Unless otherwise provided by statute, such requirements, at a minimum, shall contain the following.

(a) Title to real property shall vest in the recipient subject to the condition that the recipient shall use the real property for the authorized purpose of the project as long as it is needed and shall not encumber the property without approval of the Federal awarding agency.

(b) The recipient shall obtain written approval by the Federal awarding agency for the use of real property in other federally-sponsored projects when the recipient determines that the property is no longer needed for the purpose of the original project. Use in other projects shall be limited to those under federally-sponsored projects (i.e., awards) or programs that have purposes consistent with those authorized for support by the Federal awarding agency.

(c) When the real property is no longer needed as provided in paragraphs (a) and (b), the recipient shall request disposition instructions from the Federal awarding agency or its successor Federal awarding agency. The Federal awarding agency shall observe one or more of the following disposition instructions.

- (1) The recipient may be permitted to retain title without further obligation to the Federal Government after it compensates the Federal Government for that percentage of the current fair market value of the property attributable to the Federal participation in the project.
- (2) The recipient may be directed to sell the property under guidelines provided by the Federal awarding agency and pay the Federal Government for that percentage of the current fair market value of the property attributable to the Federal participation in the project (after deducting actual and reasonable selling and fix-up expenses, if any, from the sales proceeds). When the recipient is authorized or required to sell the property, proper sales procedures shall be established that provide for competition to the extent practicable and result in the highest possible return.
- (3) The recipient may be directed to transfer title to the property to the Federal Government or to an eligible third party provided that, in such cases, the recipient shall be entitled to compensation for its attributable percentage of the current fair market value of the property.

\_\_\_\_.33 Federally-owned and exempt property.

(a) Federally-owned property.

- (1) Title to federally-owned property remains vested in the Federal Government. Recipients shall submit annually an inventory listing of federally-owned property in their custody to the Federal awarding agency. Upon completion of the award or when the property is no longer needed, the recipient shall report the property to the Federal awarding agency for further Federal agency utilization.
- (2) If the Federal awarding agency has no further need for the property, it shall be declared excess and reported to the General Services Administration, unless the Federal awarding agency has statutory authority to dispose of the property by alternative methods (e.g., the authority provided by the Federal Technology Transfer Act (15 U.S.C. 3710 (I)) to donate research equipment to educational and non-profit organizations in accordance with E.O. 12821, "Improving Mathematics and Science Education in Support of the National Education Goals.") Appropriate instructions shall be issued to the recipient by the Federal awarding agency.

(b) Exempt property. When statutory authority exists, the Federal awarding agency has the option to vest title to property acquired with Federal funds in the recipient without further obligation to the Federal Government and under conditions the Federal awarding agency considers appropriate. Such property is "exempt property." Should a Federal awarding agency not establish conditions, title to exempt property upon acquisition shall vest in the recipient without further obligation to the Federal Government.

\_\_\_\_.34 Equipment.

- (a) Title to equipment acquired by a recipient with Federal funds shall vest in the recipient, subject to conditions of this section.
- (b) The recipient shall not use equipment acquired with Federal funds to provide services to non-Federal outside organizations for a fee that is less than

private companies charge for equivalent services, unless specifically authorized by Federal statute, for as long as the Federal Government retains an interest in the equipment.

(c) The recipient shall use the equipment in the project or program for which it was acquired as long as needed, whether or not the project or program continues to be supported by Federal funds and shall not encumber the property without approval of the Federal awarding agency. When no longer needed for the original project or program, the recipient shall use the equipment in connection with its other federally-sponsored activities, in the following order of priority: (i) Activities sponsored by the Federal awarding agency which funded the original project, then (ii) activities sponsored by other Federal awarding agencies.

(d) During the time that equipment is used on the project or program for which it was acquired, the recipient shall make it available for use on other projects or programs if such other use will not interfere with the work on the project or program for which the equipment was originally acquired. First preference for such other use shall be given to other projects or programs sponsored by the Federal awarding agency that financed the equipment; second preference shall be given to projects or programs sponsored by other Federal awarding agencies. If the equipment is owned by the Federal Government, use on other activities not sponsored by the Federal Government shall be permissible if authorized by the Federal awarding agency. User charges shall be treated as program income.

(e) When acquiring replacement equipment, the recipient may use the equipment to be replaced as trade-in or sell the equipment and use the proceeds to offset the costs of the replacement equipment subject to the approval of the Federal awarding agency.

(f) The recipient's property management standards for equipment acquired with Federal funds and federally-owned equipment shall include all of the following.

(1) Equipment records shall be maintained accurately and shall include the following information.

(i) A description of the equipment.

(ii) Manufacturer's serial number, model number, Federal stock number, national stock number, or other identification number.

(iii) Source of the equipment, including the award number.

(iv) Whether title vests in the recipient or the Federal Government.

(v) Acquisition date (or date received, if the equipment was furnished by the Federal Government) and cost.

(vi) Information from which one can calculate the percentage of Federal participation in the cost of the equipment (not applicable to equipment furnished by the Federal Government).

(vii) Location and condition of the equipment and the date the information was reported.

(viii) Unit acquisition cost.

(ix) Ultimate disposition data, including date of disposal and sales price or the method used to determine current fair market value where a recipient

compensates the Federal awarding agency for its share.

(2) Equipment owned by the Federal Government shall be identified to indicate Federal ownership.

(3) A physical inventory of equipment shall be taken and the results reconciled with the equipment records at least once every two years. Any differences between quantities determined by the physical inspection and those shown in the accounting records shall be investigated to determine the causes of the difference. The recipient shall, in connection with the inventory, verify the existence, current utilization, and continued need for the equipment.

(4) A control system shall be in effect to insure adequate safeguards to prevent loss, damage, or theft of the equipment. Any loss, damage, or theft of equipment shall be investigated and fully documented; if the equipment was owned by the Federal Government, the recipient shall promptly notify the Federal awarding agency.

(5) Adequate maintenance procedures shall be implemented to keep the equipment in good condition.

(6) Where the recipient is authorized or required to sell the equipment, proper sales procedures shall be established which provide for competition to the extent practicable and result in the highest possible return.

(g) When the recipient no longer needs the equipment, the equipment may be used for other activities in accordance with the following standards. For equipment with a current per unit fair market value of \$5000 or more, the recipient may retain the equipment for other uses provided that compensation is made to the original Federal awarding agency or its successor. The amount of compensation shall be computed by applying the percentage of Federal participation in the cost of the original project or program to the current fair market value of the equipment. If the recipient has no need for the equipment, the recipient shall request disposition instructions from the Federal awarding agency. The Federal awarding agency shall determine whether the equipment can be used to meet the agency's requirements. If no requirement exists within that agency, the availability of the equipment shall be reported to the General Services Administration by the Federal awarding agency to determine whether a requirement for the equipment exists in other Federal agencies. The Federal awarding agency shall issue instructions to the recipient no later than 120 calendar days after the recipient's request and the following procedures shall govern.

(1) If so instructed or if disposition instructions are not issued within 120 calendar days after the recipient's request, the recipient shall sell the equipment and reimburse the Federal awarding agency an amount computed by applying to the sales proceeds the percentage of Federal participation in the cost of the original project or program. However, the recipient shall be permitted to deduct and retain from the Federal share \$500 or ten percent of the proceeds, whichever is less, for the recipient's selling and handling expenses.

(2) If the recipient is instructed to ship the equipment elsewhere, the recipient shall be reimbursed by the Federal Government by an amount which is

computed by applying the percentage of the recipient's participation in the cost of the original project or program to the current fair market value of the equipment, plus any reasonable shipping or interim storage costs incurred.

(3) If the recipient is instructed to otherwise dispose of the equipment, the recipient shall be reimbursed by the Federal awarding agency for such costs incurred in its disposition.

(4) The Federal awarding agency may reserve the right to transfer the title to the Federal Government or to a third party named by the Federal Government when such third party is otherwise eligible under existing statutes. Such transfer shall be subject to the following standards.

(i) The equipment shall be appropriately identified in the award or otherwise made known to the recipient in writing.

(ii) The Federal awarding agency shall issue disposition instructions within 120 calendar days after receipt of a final inventory. The final inventory shall list all equipment acquired with grant funds and federally-owned equipment. If the Federal awarding agency fails to issue disposition instructions within the 120 calendar day period, the recipient shall apply the standards of this section, as appropriate.

(iii) When the Federal awarding agency exercises its right to take title, the equipment shall be subject to the provisions for federally-owned equipment.

\_\_\_\_.35 Supplies and other expendable property.

(a) Title to supplies and other expendable property shall vest in the recipient upon acquisition. If there is a residual inventory of unused supplies exceeding \$5000 in total aggregate value upon termination or completion of the project or program and the supplies are not needed for any other federally-sponsored project or program, the recipient shall retain the supplies for use on non-Federal sponsored activities or sell them, but shall, in either case, compensate the Federal Government for its share. The amount of compensation shall be computed in the same manner as for equipment.

(b) The recipient shall not use supplies acquired with Federal funds to provide services to non-Federal outside organizations for a fee that is less than private companies charge for equivalent services, unless specifically authorized by Federal statute as long as the Federal Government retains an interest in the supplies.

\_\_\_\_.36 Intangible property.

(a) The recipient may copyright any work that is subject to copyright and was developed, or for which ownership was purchased, under an award. The Federal awarding agency(ies) reserve a royalty-free, nonexclusive and irrevocable right to reproduce, publish, or otherwise use the work for Federal purposes, and to authorize others to do so.

(b) Recipients are subject to applicable regulations governing patents and inventions, including government-wide regulations issued by the Department of Commerce at 37 CFR part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and

Cooperative Agreements."

(c) The Federal Government has the right to:

(1) obtain, reproduce, publish or otherwise use the data first produced under an award; and

(2) authorize others to receive, reproduce, publish, or otherwise use such data for Federal purposes.

(d) (1) In addition, in response to a Freedom of Information Act (FOIA) request for research data relating to published research findings produced under an award that were used by the Federal Government in developing an agency action that has the force and effect of law, the Federal awarding agency shall request, and the recipient shall provide, within a reasonable time, the research data so that they can be made available to the public through the procedures established under the FOIA. If the Federal awarding agency obtains the research data solely in response to a FOIA request, the agency may charge the requester a reasonable fee equaling the full incremental cost of obtaining the research data. This fee should reflect costs incurred by the agency, the recipient, and applicable subrecipients. This fee is in addition to any fees the agency may assess under the FOIA (5 U.S.C. 552(a)(4)(A)).

(2) The following definitions apply for purposes of paragraph (d) of this section:

(i) Research data is defined as the recorded factual material commonly accepted in the scientific community as necessary to validate research findings, but not any of the following: preliminary analyses, drafts of scientific papers, plans for future research, peer reviews, or communications with colleagues. This "recorded" material excludes physical objects (e.g., laboratory samples).

Research data also do not include:

(A) Trade secrets, commercial information, materials necessary to be held confidential by a researcher until they are published, or similar information which is protected under law; and

(B) Personnel and medical information and similar information the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, such as information that could be used to identify a particular person in a research study.

(ii) Published is defined as either when:

(A) Research findings are published in a peer-reviewed scientific or technical journal; or

(B) A Federal agency publicly and officially cites the research findings in support of an agency action that has the force and effect of law.

(iii) Used by the Federal Government in developing an agency action that has the force and effect of law is defined as when an agency publicly and officially cites the research findings in support of an agency action that has the force and effect of law.

(e) Title to intangible property and debt instruments acquired under an award or subaward vests upon acquisition in the recipient. The recipient shall use that



property for the originally-authorized purpose, and the recipient shall not encumber the property without approval of the Federal awarding agency. When no longer needed for the originally authorized purpose, disposition of the intangible property shall occur in accordance with the provisions of paragraph \_\_\_\_\_.34(g).

\_\_\_\_\_.37 Property trust relationship. Real property, equipment, intangible property and debt instruments that are acquired or improved with Federal funds shall be held in trust by the recipient as trustee for the beneficiaries of the project or program under which the property was acquired or improved. Agencies may require recipients to record liens or other appropriate notices of record to indicate that personal or real property has been acquired or improved with Federal funds and that use and disposition conditions apply to the property.

Procurement Standards

\_\_\_\_\_.40 Purpose of procurement standards. Sections \_\_\_\_\_.41 through \_\_\_\_\_.48 set forth standards for use by recipients in establishing procedures for the procurement of supplies and other expendable property, equipment, real property and other services with Federal funds. These standards are furnished to ensure that such materials and services are obtained in an effective manner and in compliance with the provisions of applicable Federal statutes and executive orders. No additional procurement standards or requirements shall be imposed by the Federal awarding agencies upon recipients, unless specifically required by Federal statute or executive order or approved by OMB.

\_\_\_\_\_.41 Recipient responsibilities. The standards contained in this section do not relieve the recipient of the contractual responsibilities arising under its contract(s). The recipient is the responsible authority, without recourse to the Federal awarding agency, regarding the settlement and satisfaction of all contractual and administrative issues arising out of procurements entered into in support of an award or other agreement. This includes disputes, claims, protests of award, source evaluation or other matters of a contractual nature. Matters concerning violation of statute are to be referred to such Federal, State or local authority as may have proper jurisdiction.

\_\_\_\_\_.42 Codes of conduct. The recipient shall maintain written standards of conduct governing the performance of its employees engaged in the award and administration of contracts. No employee, officer, or agent shall participate in the selection, award, or administration of a contract supported by Federal funds if a real or apparent conflict of interest would be involved. Such a conflict would arise when the employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of the parties indicated herein, has a financial or other interest in the firm selected for an award. The officers, employees, and agents of the recipient shall neither solicit nor accept gratuities, favors, or anything of monetary value from contractors, or parties to subagreements. However, recipients may set standards for situations in which the financial interest is not substantial or the gift is an unsolicited item of nominal value.

The standards of conduct shall provide for disciplinary actions to be applied for violations of such standards by officers, employees, or agents of the recipient.

\_\_\_\_.43 Competition. All procurement transactions shall be conducted in a manner to provide, to the maximum extent practical, open and free competition. The recipient shall be alert to organizational conflicts of interest as well as noncompetitive practices among contractors that may restrict or eliminate competition or otherwise restrain trade. In order to ensure objective contractor performance and eliminate unfair competitive advantage, contractors that develop or draft specifications, requirements, statements of work, invitations for bids and/or requests for proposals shall be excluded from competing for such procurements. Awards shall be made to the bidder or offeror whose bid or offer is responsive to the solicitation and is most advantageous to the recipient, price, quality and other factors considered. Solicitations shall clearly set forth all requirements that the bidder or offeror shall fulfill in order for the bid or offer to be evaluated by the recipient. Any and all bids or offers may be rejected when it is in the recipient's interest to do so.

\_\_\_\_.44 Procurement procedures.

(a) All recipients shall establish written procurement procedures. These procedures shall provide for, at a minimum, that (1), (2) and (3) apply.

(1) Recipients avoid purchasing unnecessary items.

(2) Where appropriate, an analysis is made of lease and purchase alternatives to determine which would be the most economical and practical procurement for the Federal Government.

(3) Solicitations for goods and services provide for all of the following.

(i) A clear and accurate description of the technical requirements for the material, product or service to be procured. In competitive procurements, such a description shall not contain features which unduly restrict competition.

(ii) Requirements which the bidder/offeror must fulfill and all other factors to be used in evaluating bids or proposals.

(iii) A description, whenever practicable, of technical requirements in terms of functions to be performed or performance required, including the range of acceptable characteristics or minimum acceptable standards.

(iv) The specific features of "brand name or equal" descriptions that bidders are required to meet when such items are included in the solicitation.

(v) The acceptance, to the extent practicable and economically feasible, of products and services dimensioned in the metric system of measurement.

(vi) Preference, to the extent practicable and economically feasible, for products and services that conserve natural resources and protect the environment and are energy efficient.

(b) Positive efforts shall be made by recipients to utilize small businesses, minority-owned firms, and women's business enterprises, whenever possible. Recipients of Federal awards shall take all of the following steps to further this goal.

- (1) Ensure that small businesses, minority-owned firms, and women's business enterprises are used to the fullest extent practicable.
- (2) Make information on forthcoming opportunities available and arrange time frames for purchases and contracts to encourage and facilitate participation by small businesses, minority-owned firms, and women's business enterprises.
- (3) Consider in the contract process whether firms competing for larger contracts intend to subcontract with small businesses, minority-owned firms, and women's business enterprises.
- (4) Encourage contracting with consortiums of small businesses, minority-owned firms and women's business enterprises when a contract is too large for one of these firms to handle individually.
- (5) Use the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Department of Commerce's Minority Business Development Agency in the solicitation and utilization of small businesses, minority-owned firms and women's business enterprises.
- (c) The type of procuring instruments used (e.g., fixed price contracts, cost reimbursable contracts, purchase orders, and incentive contracts) shall be determined by the recipient but shall be appropriate for the particular procurement and for promoting the best interest of the program or project involved. The "cost-plus-a-percentage-of-cost" or "percentage of construction cost" methods of contracting shall not be used.
- (d) Contracts shall be made only with responsible contractors who possess the potential ability to perform successfully under the terms and conditions of the proposed procurement. Consideration shall be given to such matters as contractor integrity, record of past performance, financial and technical resources or accessibility to other necessary resources. In certain circumstances, contracts with certain parties are restricted by agencies' implementation of E.O.s 12549 and 12689, "Debarment and Suspension."
- (e) Recipients shall, on request, make available for the Federal awarding agency, pre-award review and procurement documents, such as request for proposals or invitations for bids, independent cost estimates, etc., when any of the following conditions apply.
  - (1) A recipient's procurement procedures or operation fails to comply with the procurement standards in the Federal awarding agency's implementation of this Circular.
  - (2) The procurement is expected to exceed the small purchase threshold fixed at 41 U.S.C. 403 (11) (currently \$25,000) and is to be awarded without competition or only one bid or offer is received in response to a solicitation.
  - (3) The procurement, which is expected to exceed the small purchase threshold, specifies a "brand name" product.
  - (4) The proposed award over the small purchase threshold is to be awarded to other than the apparent low bidder under a sealed bid procurement.
  - (5) A proposed contract modification changes the scope of a contract or increases the contract amount by more than the amount of the small purchase

threshold.

\_\_\_\_.45 Cost and price analysis. Some form of cost or price analysis shall be made and documented in the procurement files in connection with every procurement action. Price analysis may be accomplished in various ways, including the comparison of price quotations submitted, market prices and similar indicia, together with discounts. Cost analysis is the review and evaluation of each element of cost to determine reasonableness, allocability and allowability.

\_\_\_\_.46 Procurement records. Procurement records and files for purchases in excess of the small purchase threshold shall include the following at a minimum: (a) basis for contractor selection, (b) justification for lack of competition when competitive bids or offers are not obtained, and (c) basis for award cost or price.

\_\_\_\_.47 Contract administration. A system for contract administration shall be maintained to ensure contractor conformance with the terms, conditions and specifications of the contract and to ensure adequate and timely follow up of all purchases. Recipients shall evaluate contractor performance and document, as appropriate, whether contractors have met the terms, conditions and specifications of the contract.

\_\_\_\_.48 Contract provisions. The recipient shall include, in addition to provisions to define a sound and complete agreement, the following provisions in all contracts. The following provisions shall also be applied to subcontracts.

(a) Contracts in excess of the small purchase threshold shall contain contractual provisions or conditions that allow for administrative, contractual, or legal remedies in instances in which a contractor violates or breaches the contract terms, and provide for such remedial actions as may be appropriate.

(b) All contracts in excess of the small purchase threshold shall contain suitable provisions for termination by the recipient, including the manner by which termination shall be effected and the basis for settlement. In addition, such contracts shall describe conditions under which the contract may be terminated for default as well as conditions where the contract may be terminated because of circumstances beyond the control of the contractor.

(c) Except as otherwise required by statute, an award that requires the contracting (or subcontracting) for construction or facility improvements shall provide for the recipient to follow its own requirements relating to bid guarantees, performance bonds, and payment bonds unless the construction contract or subcontract exceeds \$100,000. For those contracts or subcontracts exceeding \$100,000, the Federal awarding agency may accept the bonding policy and requirements of the recipient, provided the Federal awarding agency has made a determination that the Federal Government's interest is adequately protected. If such a determination has not been made, the minimum requirements shall be as follows.

(1) A bid guarantee from each bidder equivalent to five percent of the bid price. The "bid guarantee" shall consist of a firm commitment such as a bid

bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder shall, upon acceptance of his bid, execute such contractual documents as may be required within the time specified.

(2) A performance bond on the part of the contractor for 100 percent of the contract price. A "performance bond" is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract.

(3) A payment bond on the part of the contractor for 100 percent of the contract price. A "payment bond" is one executed in connection with a contract to assure payment as required by statute of all persons supplying labor and material in the execution of the work provided for in the contract.

(4) Where bonds are required in the situations described herein, the bonds shall be obtained from companies holding certificates of authority as acceptable sureties pursuant to 31 CFR part 223, "Surety Companies Doing Business with the United States."

(d) All negotiated contracts (except those for less than the small purchase threshold) awarded by recipients shall include a provision to the effect that the recipient, the Federal awarding agency, the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers and records of the contractor which are directly pertinent to a specific program for the purpose of making audits, examinations, excerpts and transcriptions.

(e) All contracts, including small purchases, awarded by recipients and their contractors shall contain the procurement provisions of Appendix A to this Circular, as applicable.

#### Reports and Records

\_\_\_\_.50 Purpose of reports and records. Sections \_\_\_\_\_.51 through \_\_\_\_\_.53 set forth the procedures for monitoring and reporting on the recipient's financial and program performance and the necessary standard reporting forms. They also set forth record retention requirements.

\_\_\_\_.51 Monitoring and reporting program performance.

(a) Recipients are responsible for managing and monitoring each project, program, subaward, function or activity supported by the award. Recipients shall monitor subawards to ensure subrecipients have met the audit requirements as delineated in Section \_\_\_\_\_.26.

(b) The Federal awarding agency shall prescribe the frequency with which the performance reports shall be submitted. Except as provided in paragraph \_\_\_\_\_.51(f), performance reports shall not be required more frequently than quarterly or, less frequently than annually. Annual reports shall be due 90 calendar days after the grant year; quarterly or semi-annual reports shall be due 30 days after the reporting period. The Federal awarding agency may require annual reports before the anniversary dates of multiple year awards in lieu of these requirements. The final performance reports are due 90 calendar days after the expiration or termination of the award.

- (c) If inappropriate, a final technical or performance report shall not be required after completion of the project.
- (d) When required, performance reports shall generally contain, for each award, brief information on each of the following.
  - (1) A comparison of actual accomplishments with the goals and objectives established for the period, the findings of the investigator, or both. Whenever appropriate and the output of programs or projects can be readily quantified, such quantitative data should be related to cost data for computation of unit costs.
  - (2) Reasons why established goals were not met, if appropriate.
  - (3) Other pertinent information including, when appropriate, analysis and explanation of cost overruns or high unit costs.
- (e) Recipients shall not be required to submit more than the original and two copies of performance reports.
- (f) Recipients shall immediately notify the Federal awarding agency of developments that have a significant impact on the award-supported activities. Also, notification shall be given in the case of problems, delays, or adverse conditions which materially impair the ability to meet the objectives of the award. This notification shall include a statement of the action taken or contemplated, and any assistance needed to resolve the situation.
- (g) Federal awarding agencies may make site visits, as needed.
- (h) Federal awarding agencies shall comply with clearance requirements of 5 CFR part 1320 when requesting performance data from recipients.

\_\_\_\_.52 Financial reporting.

- (a) The following forms or such other forms as may be approved by OMB are authorized for obtaining financial information from recipients.
  - (1) SF-269 or SF-269A, Financial Status Report.
    - (i) Each Federal awarding agency shall require recipients to use the SF-269 or SF-269A to report the status of funds for all nonconstruction projects or programs. A Federal awarding agency may, however, have the option of not requiring the SF-269 or SF-269A when the SF-270, Request for Advance or Reimbursement, or SF-272, Report of Federal Cash Transactions, is determined to provide adequate information to meet its needs, except that a final SF-269 or SF-269A shall be required at the completion of the project when the SF-270 is used only for advances.
    - (ii) The Federal awarding agency shall prescribe whether the report shall be on a cash or accrual basis. If the Federal awarding agency requires accrual information and the recipient's accounting records are not normally kept on the accrual basis, the recipient shall not be required to convert its accounting system, but shall develop such accrual information through best estimates based on an analysis of the documentation on hand.
    - (iii) The Federal awarding agency shall determine the frequency of the Financial Status Report for each project or program, considering the size and complexity of the particular project or program. However, the report shall not be required

more frequently than quarterly or less frequently than annually. A final report shall be required at the completion of the agreement.

(iv) The Federal awarding agency shall require recipients to submit the SF-269 or SF-269A (an original and no more than two copies) no later than 30 days after the end of each specified reporting period for quarterly and semi-annual reports, and 90 calendar days for annual and final reports. Extensions of reporting due dates may be approved by the Federal awarding agency upon request of the recipient.

(2) SF-272, Report of Federal Cash Transactions.

(i) When funds are advanced to recipients the Federal awarding agency shall require each recipient to submit the SF-272 and, when necessary, its continuation sheet, SF-272a. The Federal awarding agency shall use this report to monitor cash advanced to recipients and to obtain disbursement information for each agreement with the recipients.

(ii) Federal awarding agencies may require forecasts of Federal cash requirements in the "Remarks" section of the report.

(iii) When practical and deemed necessary, Federal awarding agencies may require recipients to report in the "Remarks" section the amount of cash advances received in excess of three days. Recipients shall provide short narrative explanations of actions taken to reduce the excess balances.

(iv) Recipients shall be required to submit not more than the original and two copies of the SF-272 15 calendar days following the end of each quarter. The Federal awarding agencies may require a monthly report from those recipients receiving advances totaling \$1 million or more per year.

(v) Federal awarding agencies may waive the requirement for submission of the SF-272 for any one of the following reasons: (1) When monthly advances do not exceed \$25,000 per recipient, provided that such advances are monitored through other forms contained in this section; (2) If, in the Federal awarding agency's opinion, the recipient's accounting controls are adequate to minimize excessive Federal advances; or, (3) When the electronic payment mechanisms provide adequate data.

(b) When the Federal awarding agency needs additional information or more frequent reports, the following shall be observed.

(1) When additional information is needed to comply with legislative requirements, Federal awarding agencies shall issue instructions to require recipients to submit such information under the "Remarks" section of the reports.

(2) When a Federal awarding agency determines that a recipient's accounting system does not meet the standards in Section \_\_\_\_\_.21, additional pertinent information to further monitor awards may be obtained upon written notice to the recipient until such time as the system is brought up to standard. The Federal awarding agency, in obtaining this information, shall comply with report clearance requirements of 5 CFR part 1320.

(3) Federal awarding agencies are encouraged to shade out any line item on any

report if not necessary.

(4) Federal awarding agencies may accept the identical information from the recipients in machine readable format or computer printouts or electronic outputs in lieu of prescribed formats.

(5) Federal awarding agencies may provide computer or electronic outputs to recipients when such expedites or contributes to the accuracy of reporting.

\_\_\_\_.53 Retention and access requirements for records.

(a) This section sets forth requirements for record retention and access to records for awards to recipients. Federal awarding agencies shall not impose any other record retention or access requirements upon recipients.

(b) Financial records, supporting documents, statistical records, and all other records pertinent to an award shall be retained for a period of three years from the date of submission of the final expenditure report or, for awards that are renewed quarterly or annually, from the date of the submission of the quarterly or annual financial report, as authorized by the Federal awarding agency. The only exceptions are the following.

(1) If any litigation, claim, or audit is started before the expiration of the 3-year period, the records shall be retained until all litigation, claims or audit findings involving the records have been resolved and final action taken.

(2) Records for real property and equipment acquired with Federal funds shall be retained for 3 years after final disposition.

(3) When records are transferred to or maintained by the Federal awarding agency, the 3-year retention requirement is not applicable to the recipient.

(4) Indirect cost rate proposals, cost allocations plans, etc. as specified in paragraph \_\_\_\_\_.53(g).

(c) Copies of original records may be substituted for the original records if authorized by the Federal awarding agency.

(d) The Federal awarding agency shall request transfer of certain records to its custody from recipients when it determines that the records possess long term retention value. However, in order to avoid duplicate recordkeeping, a Federal awarding agency may make arrangements for recipients to retain any records that are continuously needed for joint use.

(e) The Federal awarding agency, the Inspector General, Comptroller General of the United States, or any of their duly authorized representatives, have the right of timely and unrestricted access to any books, documents, papers, or other records of recipients that are pertinent to the awards, in order to make audits, examinations, excerpts, transcripts and copies of such documents. This right also includes timely and reasonable access to a recipient's personnel for the purpose of interview and discussion related to such documents. The rights of access in this paragraph are not limited to the required retention period, but shall last as long as records are retained.

(f) Unless required by statute, no Federal awarding agency shall place restrictions on recipients that limit public access to the records of recipients that are pertinent to an award, except when the Federal awarding agency can



demonstrate that such records shall be kept confidential and would have been exempted from disclosure pursuant to the Freedom of Information Act (5 U.S.C. 552) if the records had belonged to the Federal awarding agency.

(g) Indirect cost rate proposals, cost allocations plans, etc. Paragraphs (g)(1) and (g)(2) apply to the following types of documents, and their supporting records: indirect cost rate computations or proposals, cost allocation plans, and any similar accounting computations of the rate at which a particular group of costs is chargeable (such as computer usage chargeback rates or composite fringe benefit rates).

(1) If submitted for negotiation. If the recipient submits to the Federal awarding agency or the subrecipient submits to the recipient the proposal, plan, or other computation to form the basis for negotiation of the rate, then the 3-year retention period for its supporting records starts on the date of such submission.

(2) If not submitted for negotiation. If the recipient is not required to submit to the Federal awarding agency or the subrecipient is not required to submit to the recipient the proposal, plan, or other computation for negotiation purposes, then the 3-year retention period for the proposal, plan, or other computation and its supporting records starts at the end of the fiscal year (or other accounting period) covered by the proposal, plan, or other computation.

#### Termination and Enforcement

\_\_\_\_.60 Purpose of termination and enforcement. Sections \_\_\_\_\_.61 and \_\_\_\_\_.62 set forth uniform suspension, termination and enforcement procedures.

#### \_\_\_\_.61 Termination.

(a) Awards may be terminated in whole or in part only if (1), (2) or (3) apply.

(1) By the Federal awarding agency, if a recipient materially fails to comply with the terms and conditions of an award.

(2) By the Federal awarding agency with the consent of the recipient, in which case the two parties shall agree upon the termination conditions, including the effective date and, in the case of partial termination, the portion to be terminated.

(3) By the recipient upon sending to the Federal awarding agency written notification setting forth the reasons for such termination, the effective date, and, in the case of partial termination, the portion to be terminated. However, if the Federal awarding agency determines in the case of partial termination that the reduced or modified portion of the grant will not accomplish the purposes for which the grant was made, it may terminate the grant in its entirety under either paragraphs (a)(1) or (2).

(b) If costs are allowed under an award, the responsibilities of the recipient referred to in paragraph \_\_\_\_\_.71(a), including those for property management as applicable, shall be considered in the termination of the award, and provision shall be made for continuing responsibilities of the recipient after termination, as appropriate.

#### \_\_\_\_.62 Enforcement.

(a) Remedies for noncompliance. If a recipient materially fails to comply with the terms and conditions of an award, whether stated in a Federal statute, regulation, assurance, application, or notice of award, the Federal awarding agency may, in addition to imposing any of the special conditions outlined in Section \_\_\_.14, take one or more of the following actions, as appropriate in the circumstances.

(1) Temporarily withhold cash payments pending correction of the deficiency by the recipient or more severe enforcement action by the Federal awarding agency.

(2) Disallow (that is, deny both use of funds and any applicable matching credit for) all or part of the cost of the activity or action not in compliance.

(3) Wholly or partly suspend or terminate the current award.

(4) Withhold further awards for the project or program.

(5) Take other remedies that may be legally available.

(b) Hearings and appeals. In taking an enforcement action, the awarding agency shall provide the recipient an opportunity for hearing, appeal, or other administrative proceeding to which the recipient is entitled under any statute or regulation applicable to the action involved.

(c) Effects of suspension and termination. Costs of a recipient resulting from obligations incurred by the recipient during a suspension or after termination of an award are not allowable unless the awarding agency expressly authorizes them in the notice of suspension or termination or subsequently. Other recipient costs during suspension or after termination which are necessary and not reasonably avoidable are allowable if (1) and (2) apply.

(1) The costs result from obligations which were properly incurred by the recipient before the effective date of suspension or termination, are not in anticipation of it, and in the case of a termination, are noncancellable.

(2) The costs would be allowable if the award were not suspended or expired normally at the end of the funding period in which the termination takes effect.

(d) Relationship to debarment and suspension. The enforcement remedies identified in this section, including suspension and termination, do not preclude a recipient from being subject to debarment and suspension under E.O.s 12549 and 12689 and the Federal awarding agency implementing regulations (see Section \_\_\_.13).

#### SUBPART D - After-the-Award Requirements

\_\_\_.70 Purpose. Sections \_\_\_.71 through \_\_\_.73 contain closeout procedures and other procedures for subsequent disallowances and adjustments.

#### \_\_\_.71 Closeout procedures.

(a) Recipients shall submit, within 90 calendar days after the date of completion of the award, all financial, performance, and other reports as required by the terms and conditions of the award. The Federal awarding agency may approve extensions when requested by the recipient.

(b) Unless the Federal awarding agency authorizes an extension, a recipient shall liquidate all obligations incurred under the award not later than 90 calendar days after the funding period or the date of completion as specified in

the terms and conditions of the award or in agency implementing instructions.

(c) The Federal awarding agency shall make prompt payments to a recipient for allowable reimbursable costs under the award being closed out.

(d) The recipient shall promptly refund any balances of unobligated cash that the Federal awarding agency has advanced or paid and that is not authorized to be retained by the recipient for use in other projects. OMB Circular A-129 governs unreturned amounts that become delinquent debts.

(e) When authorized by the terms and conditions of the award, the Federal awarding agency shall make a settlement for any upward or downward adjustments to the Federal share of costs after closeout reports are received.

(f) The recipient shall account for any real and personal property acquired with Federal funds or received from the Federal Government in accordance with Sections \_\_\_\_\_.31 through \_\_\_\_\_.37.

(g) In the event a final audit has not been performed prior to the closeout of an award, the Federal awarding agency shall retain the right to recover an appropriate amount after fully considering the recommendations on disallowed costs resulting from the final audit.

\_\_\_\_\_.72 Subsequent adjustments and continuing responsibilities.

(a) The closeout of an award does not affect any of the following.

(1) The right of the Federal awarding agency to disallow costs and recover funds on the basis of a later audit or other review.

(2) The obligation of the recipient to return any funds due as a result of later refunds, corrections, or other transactions.

(3) Audit requirements in Section \_\_\_\_\_.26.

(4) Property management requirements in Sections \_\_\_\_\_.31 through \_\_\_\_\_.37.

(5) Records retention as required in Section \_\_\_\_\_.53.

(b) After closeout of an award, a relationship created under an award may be modified or ended in whole or in part with the consent of the Federal awarding agency and the recipient, provided the responsibilities of the recipient referred to in paragraph \_\_\_\_\_.73(a), including those for property management as applicable, are considered and provisions made for continuing responsibilities of the recipient, as appropriate.

\_\_\_\_\_.73 Collection of amounts due.

(a) Any funds paid to a recipient in excess of the amount to which the recipient is finally determined to be entitled under the terms and conditions of the award constitute a debt to the Federal Government. If not paid within a reasonable period after the demand for payment, the Federal awarding agency may reduce the debt by (1), (2) or (3).

(1) Making an administrative offset against other requests for reimbursements.

(2) Withholding advance payments otherwise due to the recipient.

(3) Taking other action permitted by statute.

(b) Except as otherwise provided by law, the Federal awarding agency shall charge interest on an overdue debt in accordance with 4 CFR Chapter II, "Federal Claims Collection Standards."

## Appendix A

### Contract Provisions

All contracts, awarded by a recipient including small purchases, shall contain the following provisions as applicable:

1. Equal Employment Opportunity - All contracts shall contain a provision requiring compliance with E.O. 11246, "Equal Employment Opportunity," as amended by E.O. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and as supplemented by regulations at 41 CFR part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor."

2. Copeland "Anti-Kickback" Act (18 U.S.C. 874 and 40 U.S.C. 276c) - All contracts and subgrants in excess of \$2000 for construction or repair awarded by recipients and subrecipients shall include a provision for compliance with the Copeland "Anti-Kickback" Act (18 U.S.C. 874), as supplemented by Department of Labor regulations (29 CFR part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States"). The Act provides that each contractor or subrecipient shall be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he is otherwise entitled. The recipient shall report all suspected or reported violations to the Federal awarding agency.

3. Davis-Bacon Act, as amended (40 U.S.C. 276a to a-7) - When required by Federal program legislation, all construction contracts awarded by the recipients and subrecipients of more than \$2000 shall include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 276a to a-7) and as supplemented by Department of Labor regulations (29 CFR part 5, "Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction"). Under this Act, contractors shall be required to pay wages to laborers and mechanics at a rate not less than the minimum wages specified in a wage determination made by the Secretary of Labor. In addition, contractors shall be required to pay wages not less than once a week. The recipient shall place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation and the award of a contract shall be conditioned upon the acceptance of the wage determination. The recipient shall report all suspected or reported violations to the Federal awarding agency.

4. Contract Work Hours and Safety Standards Act (40 U.S.C. 327-333) - Where applicable, all contracts awarded by recipients in excess of \$2000 for construction contracts and in excess of \$2500 for other contracts that involve the employment of mechanics or laborers shall include a provision for compliance with Sections 102 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-333), as supplemented by Department of Labor regulations (29 CFR part 5). Under Section 102 of the Act, each contractor shall be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible

provided that the worker is compensated at a rate of not less than 1 ½ times the basic rate of pay for all hours worked in excess of 40 hours in the work week. Section 107 of the Act is applicable to construction work and provides that no laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

5. Rights to Inventions Made Under a Contract or Agreement - Contracts or agreements for the performance of experimental, developmental, or research work shall provide for the rights of the Federal Government and the recipient in any resulting invention in accordance with 37 CFR part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency.

6. Clean Air Act (42 U.S.C. 7401 et seq.) and the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.), as amended - Contracts and subgrants of amounts in excess of \$100,000 shall contain a provision that requires the recipient to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401 et seq.) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251 et seq.). Violations shall be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

7. Byrd Anti-Lobbying Amendment (31 U.S.C. 1352) - Contractors who apply or bid for an award of \$100,000 or more shall file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient.

8. Debarment and Suspension (E.O.s 12549 and 12689) - No contract shall be made to parties listed on the General Services Administration's List of Parties Excluded from Federal Procurement or Nonprocurement Programs in accordance with E.O.s 12549 and 12689, "Debarment and Suspension." This list contains the names of parties debarred, suspended, or otherwise excluded by agencies, and contractors declared ineligible under statutory or regulatory authority other than E.O. 12549. Contractors with awards that exceed the small purchase threshold shall provide the required certification regarding its exclusion status and that of its principal employees.

The Budget Legislative Information Management Reform/GPRA Grants Management  
Financial Management Procurement Policy Information & Regulatory Policy

Help

THE WHITE HOUSE